

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 470

THE UNITED STATES, APPELLANT

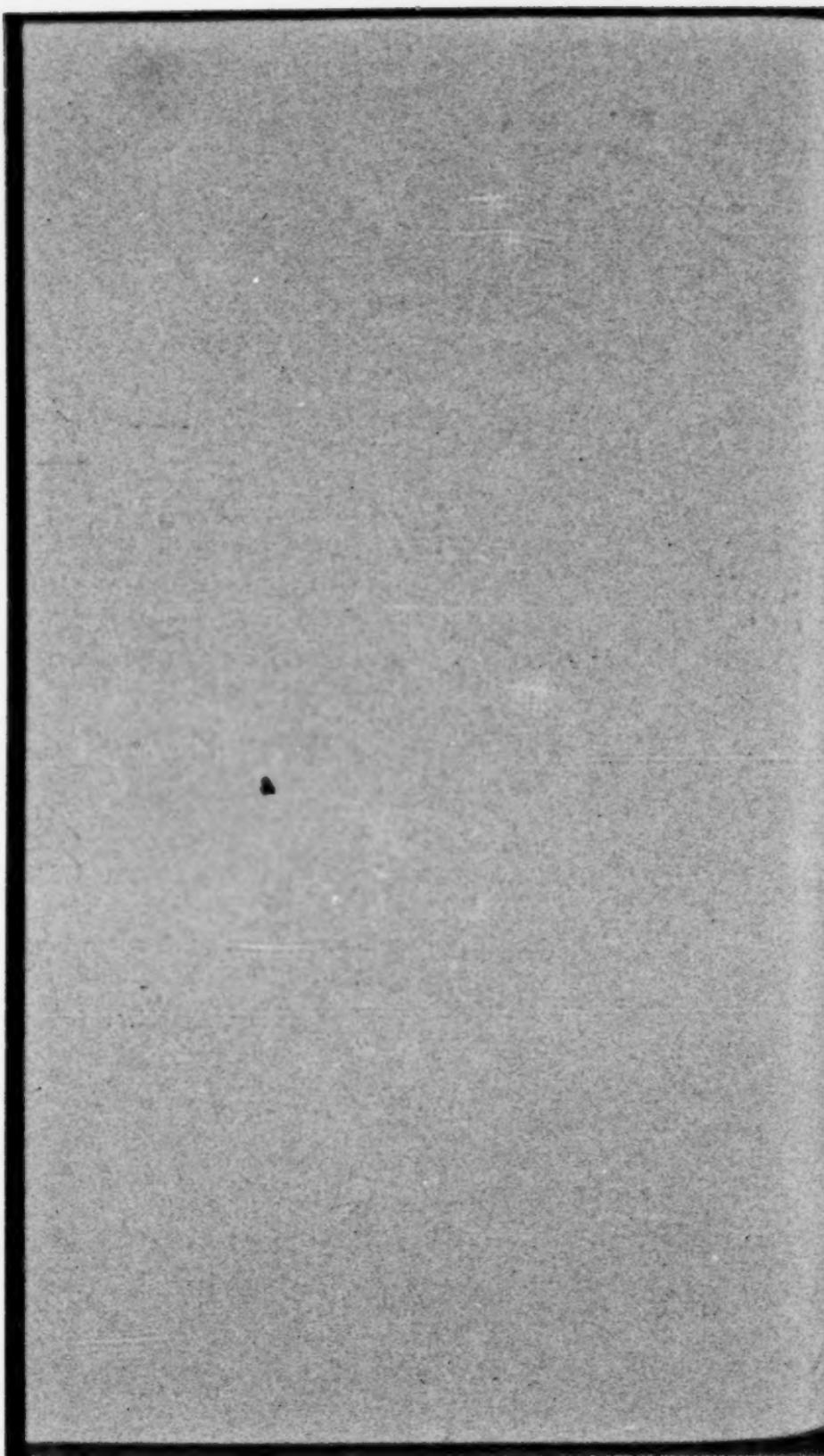
vs.

**JOHN J. MITCHELL ET AL. AS EXECUTORS OF THE
LAST WILL AND TESTAMENT OF DELLORA R. GATES,
DECEASED**

APPEAL FROM THE COURT OF CLAIMS

FILED MAY 14, 1926

(31184)



SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1925

No. 470

THE UNITED STATES, APPELLANT

vs.

JOHN J. MITCHELL ET AL. AS EXECUTORS OF THE
LAST WILL AND TESTAMENT OF DELLORA R. GATES,
DECEASED

APPEAL FROM THE COURT OF CLAIMS

INDEX

Record from Court of Claims:	Original	Print
Petition	1	1
Exhibit "A," will of Dellora R. Gates and order probating same	15	8
Exhibit "B," income tax return	70	36
General traverse	74	40
Argument and submission	74	40
History of proceedings	74	40
Findings of fact	75	40
Conclusion of law	80	46
Memorandum opinion	80	46
Judgment	81	47
Petition for appeal	81	47
Order allowing appeal	81	47
Clerk's certificate	82	47

COPY BOUND CL

In Court of Claims

JOHN J. MITCHELL, AUGUSTINE L. HUMES, AND CHARLES
E. Herrmann, as executors of the last will and testa-
ment of Dellora R. Gates, deceased }
vs. } No. C-1279
THE UNITED STATES }

I. Petition

(Filed December 6, 1923)

*To the Honorable the Chief Justice and Judges of the Court of
Claims:*

The claimants, John J. Mitchell, Augustine L. Humes, and Charles E. Herrmann, as executors of the last will and testament of Dellora R. Gates, deceased, file this their petition in the above-entitled cause and respectfully represent to this honorable court as follows:

FOR A FIRST CLAIM, CAUSE OF ACTION, AND GROUND OF SUIT

I

The claimants, John J. Mitchell, Augustine L. Humes, and Charles E. Herrmann, are executors of the last will and testament of Dellora R. Gates, deceased.

II

The said John J. Mitchell, Augustine L. Humes, and Charles E. Herrmann are each and all citizens of the United States, the said John J. Mitchell being a resident of the city of Chicago, county of Cook, and State of Illinois; the said Augustine L. Humes being a resident of the borough of Spring Lake, county of Monmouth, and State of New Jersey; and the said Charles E. Herrmann being a resident of the village of Scarsdale, county of Westchester, and State of New York, and each and all of them have at all times borne true allegiance to the Government of the United States and have not in any way aided, abetted, or given encouragement to rebellion against the said Government, or at any time aided or abetted in any manner or given comfort to any sovereign or government that is or ever has been at war with the United States.

III

Dellora R. Gates was a citizen of the United States and resided at Port Arthur, Jefferson County, and State of Texas, and died at the Hotel Plaza, in the city, county, and State of New York, on the 28th day of November, 1918. The said Dellora R. Gates had at all times prior to her death borne true allegiance to the Government of the United States and had not in any way aided, abetted, or given en-

couragement to rebellion against the said Government, or at any time aided or abetted in any manner or given comfort to any sovereign or government that is or ever has been at war with the United States.

IV

The said Dellora R. Gates died leaving a last will and testament with codicil thereto, which will and codicil were duly probated in the County Court of Jefferson County, State of Texas, on January 6, 1919, and letters testamentary thereon were issued to said executors by said County Court on the 6th day of January, 1919, and the said executors thereupon duly qualified as such, and said appointment of said executors still remains in full force and effect. A certified copy of said last will and testament and codicil thereto and of said letters testamentary are annexed hereto, made a part hereof and marked Exhibit "A." Your petitioners have been continuously executors of the said estate from the time of the issuance of said letters testamentary down to the time of the filing of this petition.

V

The said Dellora R. Gates in and by said will and codicil made certain money bequests to legatees and made certain specific bequests and devises to certain legatees and devisees, bequeathing and devising to them certain personal and real property, which property was not income-producing and produced no income during the year 1919. All the rest and residue of the property, both real, personal, and mixed of every kind and character of which said Dellora R. Gates, deceased, was seized and possessed, was bequeathed and devised by a general legacy and devise by said Dellora R. Gates to trustees in trust, the net income to be paid over as provided in article 4 "fifty-first" of the said last will and testament, a copy whereof is annexed hereto and marked Exhibit "A." Dellora F. Angell (now Dellora A. Norris) and Edward J. Baker, the persons named in said article "fifty-first," were both living at the death of the said Dellora R. Gates, and are both living at the present time.

VI

The said executors, in their capacity as executors of the estate of said Dellora R. Gates, during the year 1919 and prior to the 31st day of December, 1919, collected all the income and earnings on and from the property and assets of the said estate of Dellora R. Gates, all of said income and earnings collected being collected from stock, bonds, choses in action, and personal property, except that \$272.15 of said income so collected was collected from real property, and none of said income or earnings was collected from property specifically bequeathed or devised by said will or codicil of said Dellora R. Gates, deceased. Of said income and earnings so collected by said executors the sum of \$75,033.97 was applied by them for the sup-

port, education, and maintenance of Dellora F. Angell, in accordance with the provisions of Subdivision "I" of article "fifty-first" of the said last will and testament, and all the remainder of said income and earnings so collected by said executors was used and applied by them in their capacity as such executors in and towards the payment to the United States of the "estate tax" (imposed by the act of September 8, 1916, and amendments thereto by the acts of March 3, 1917, and October 3, 1917) and other valid claims or charges against said estate.

The gross amount of income received by the executors from the said estate for the year 1919 was less than the amount of the said "estate tax" paid by them to the United States.

In conformity with the practice and rules and regulations of the Treasury Department under sections 223-225 of the revenue act of 1918, the said executors, during the year 1920 and within the time prescribed by law, and on March 14, 1920, made and filed with the collector of internal revenue at Albany, New York, a return of all the income received during the year 1919 by said executors in their capacity as executors of the estate of said Dellora R. Gates, deceased. In said income tax return said executors did not claim a deduction under the provisions of section 214 of the revenue act of 1918 for the whole or any part of the sum of \$2,927,762.64, which was the amount of "estate tax" payable by and chargeable against said estate as shown by the return for "estate tax" filed by said executors on or about the 26th day of November, 1919, with the collector of internal revenue for the district in which Port Arthur, Texas, is situated, and of which amount of "estate tax" \$1,000,000 was paid by said executors to said collector on the 25th day of February, 1920, and the balance of which amount of "estate tax" was paid by said executors to said collector on the 27th day of May, 1920. Said executors did not claim a deduction for said amount of "estate tax" for the reason that the regulations and rulings of the Commissioner of Internal Revenue and the Secretary of the Treasury, and among others, article 134 of regulations 45, forbade and refused to allow any deduction of any part of the "estate tax" upon the said estate.

At the time when in the year 1920 the executors made and filed as aforesaid their said return of income received and collected by them as such executors during the year 1919, the regulations and rulings of the Commissioner of Internal Revenue and the Secretary of the Treasury forbade and refused to allow any deduction from said income so received and collected during the year 1919 of any part of the "estate tax" upon said estate, and neither the decision of the Court of Claims nor the decision of the Supreme Court of the United States in the case of United States v. Woodward, 256 U. S. 632, had been rendered. The income tax computed upon the amount of income received by said executors as set forth in their said return, without making any deduction for "estate tax," amounted to the sum of \$905,225.73. A copy of said income tax return is, together

with the instructions printed on the return, hereto annexed, made a part hereof and marked Exhibit "B." The said executors on or about March 15, 1920, made payment, under protest, of the first quarterly installment of the said sum of \$905,225.73 in order to

7 avoid the imposition of penalties and interest by the Commissioner of Internal Revenue and the Collector of Internal

Revenue at Albany, New York, and to avoid distress or other summary proceedings or other proceedings for the enforcement and collection of taxes consequent upon the failure or refusal to pay the tax as computed in accordance with the said regulations and rulings. Thereafter pursuant to said regulations and rulings and in accordance with the practice of the Treasury Department in such cases the collector of internal revenue at Albany, New York, made three several demands on the said executors for the payment of the second, third, and fourth quarterly installments of said tax, respectively. In order to avoid the imposition of penalties and interest by the Commissioner of Internal Revenue and the collector of internal revenue at Albany, New York, and to avoid distress or other summary proceedings or other proceedings for the enforcement and collection of the taxes consequent upon failure or refusal to pay the tax in accordance with said regulations, rulings, and demands, said executors made the payments, under protest, of the second, third, and fourth quarterly installments of the said tax for the year 1919 amounting in the aggregate to a total of \$678,919.30, which, together with the first quarterly installment, amounted in the aggregate to a total sum of \$905,225.73; that the said second, third, and fourth quarterly installments were paid to the collector of internal revenue at Albany, New York, in equal quarterly payments on or about the fifteenth days of June, September, and December, respectively, in the year 1920.

8

VII

✓ On January 6, 1922, said executors duly filed an application with the collector of internal revenue at Albany, New York, praying for the refund of all of said income tax for the year 1919 so paid, on the ground that the "estate tax" was deductible in computing said income tax. Said application for refund was in all respects complete, regular, and in due form, but was denied and rejected by the Commissioner of Internal Revenue and the Secretary of the Treasury, who still deny and refuse to pay said executors the money asked for and demanded in said application.

VIII

The said sum of \$905,225.73 so paid by said executors as and for a tax as aforesaid was received and is still retained by the United States.

IX

The said executors in their capacity as such are the sole owners of the claim sued upon herein and no assignment or transfer of said claim or any part thereof or any interest therein has been made.

X

No action upon this claim other than as herein set forth has been taken before Congress or other of the departments of the Government or in any court other than the petition filed in this court.

XI

On or about the 14th day of February, 1923, the Commissioner of Internal Revenue, acting of his own motion and notwithstanding respect of any claim filed by the said executors, notified the said executors that the "estate tax" paid as aforesaid had been allowed as a deduction in computing the income tax payable with respect to the income of said estate received during the year 1920, and offered to remit the taxes with respect to said income received during the year 1920 so far as said taxes had not been paid, and to refund such part of said taxes as had been paid, but the said executors refused and still refuse to accept such application of said "estate tax," or remission or refund of said taxes in respect of income received during the year 1920, or any part thereof, and then demanded and still do demand that said "estate tax" be allowed as a deduction in computing the tax payable in respect of income received during the year 1919.

XII

If said "estate tax" paid as aforesaid had been allowed as a deduction in computing the tax payable with respect to the income received during the year 1919, neither your petitioners as executors as aforesaid, nor said estate, would have been liable for or chargeable with any income tax on said return of income received during the year 1919, and no assessment of income of \$905,225.73, or any other sum would have been made against either your petitioners as such executors or against said estate.

XIII

Your petitioners, John J. Mitchell, Augustine L. Humes, and Charles E. Herrmann, in their capacity as executors of Dellora R. Gates, deceased, aver that there is now justly due and owing to them as such executors by the United States the said sum of \$905,225.73; that against said amount the United States are entitled, for the purposes of this suit, to an offset in the sum of

\$381,931.57 for unpaid income tax in respect of income received during the year 1920, and that petitioners in their capacity as executors as aforesaid are justly entitled to the sum of \$523,294.16 from the United States, after allowing all just credits and offsets.

FOR A SECOND AND INDEPENDENT CLAIM, CAUSE OF ACTION, AND GROUND
OF SUIT

XIV

The claimants, John J. Mitchell, Augustine L. Humes, and Charles E. Herrmann, in their capacity as executors of Dellora R. Gates, deceased, repeat and reallege each and every statement and allegation set forth in the paragraphs of this petition numbered "I," "II," "III," "IV," "V," and "VI" as if the same had been fully and at length set forth herein.

XV

In the income tax return filed in 1920 of income received during the year 1919, as set forth in paragraph "VI" of this petition, a copy of which return, together with the instructions printed on the return, is annexed hereto, made a part hereof and marked "Exhibit B," said executors did not claim any deduction under the provisions of section 214 of the revenue act of 1918 for any inheritance tax, for the reason that the regulations and rulings of the Commissioner of Internal Revenue and the Secretary of the Treasury, and, among others, article 134 of regulations 45, forbade and refused to allow any deduction of any part of the inheritance taxes upon the said estate.

XVI

During the year 1919 there became due and payable by the executors of the estate of Dellora R. Gates the inheritance tax imposed by the State of Texas, amounting to the sum of \$357,739.34, which sum the executors paid to the State of Texas on the 27th day of May, 1919. By the terms of the will of the said Dellora R. Gates the executors were required to pay said inheritance tax from the residuary estate, which was bequeathed and devised in trust as aforesaid. By the laws of the State of Texas the said executors were required to pay said inheritance tax and were subject to statutory penalties for noncompliance with the said requirement and to liability for said tax. In the income-tax return aforesaid the executors did not claim a deduction for the said sum of \$357,739.34, for the reason that the regulations and rulings of the Commissioner of Internal Revenue and the Secretary of the Treasury forbade and refused to allow any deduction for any part of said inheritance tax. Said inheritance tax was paid to the State of Texas on the respective legacies and devises set forth in the will, and the amount thereof was paid out of and deducted from the residuary estate.

XVII

At the time when in the year 1920 the executors made and filed their said return of income received and collected by them as such executors during the year 1919 the regulations and rulings of the Commissioner of Internal Revenue and the Secretary of the Treasury forbade and refused to allow any deduction from said income so received and collected during the year 1919 for any part of any inheritance tax paid upon or in respect of said estate or any part thereof.

XVIII

On January 6, 1922, said executors duly filed an application with the collector of internal revenue at Albany, New York, praying for the refund of said income tax for the year 1919 paid as set forth in paragraph "VI" of this petition, on the ground that said inheritance tax paid to the State of Texas was deductible in computing said income tax. Said application for refund was in all respects complete, regular, and in due form, but was denied and rejected by the Commissioner of Internal Revenue and the Secretary of the Treasury, who still deny and refuse to pay said executors the money asked for and demanded in said application.

XIX

The said sum of \$905,225.73 so paid by said executors as and for tax as aforesaid was received and is still retained by the United States.

XX

The said executors in their capacity as such are the sole owners of the claim sued upon herein and no assignment or transfer of said claim or any part thereof or any interest therein has been made.

XXI

If said inheritance tax paid as aforesaid to the State of Texas had been allowed as a deduction in computing the income tax payable with respect to the income received during the year 1919 as aforesaid, said income tax would have been reduced (independently of the "First claim, cause of action, and ground of suit" set forth in this petition) by the sum of \$261,149.72.

XXII

No action upon this claim other than herein set forth has been taken before Congress or other of the departments of the Government or in any court other than the petition filed in this court.

XXIII

Your petitioners, John J. Mitchell, Augustine L. Humes, and Charles E. Herrmann, in their capacity as executors of Dellora R. Gates, deceased, aver that there is now justly due and owing to them in their capacity as executors as aforesaid by the United States the said sum of \$261,149.72, and that petitioners in their capacity as executors as aforesaid are justly entitled to the said amount from the United States, after allowing all just credits and offsets.

Wherefore, your petitioners pray for judgment against the
14 United States for the said sum of \$523,294.16, with interest
on \$226,306.43 thereof from the 15th day of March, 1920,
on \$226,306.43 thereof from the 15th day of June, 1920; and on the
remainder thereof, namely, \$70,681.30, from the 15th day of Sep-
tember, 1920.

JOHN J. MITCHELL,
AUGUSTINE L. HUMES,
CHARLES E. HERRMANN,

*As Executors of the Last Will and
Testament of Dellora R. Gates, Deceased.*

By HUMES, BUCK & SMITH,
Attorneys.

[Sworn to by Augustine L. Humes; jurat omitted in printing]

15

Exhibit "A" to petition

ORDER PROBATING WILL AND APPOINTING APPRAISERS

STATE OF TEXAS,

County of Jefferson.

In the County Court of Jefferson County, Texas, January 6th, 1919.

On this day in open court came on to be heard the petition of John J. Mitchell, Augustine L. Humes, and Charles E. Herrmann filed herein on the 10th day of December, 1918, for the probate of the will of Dellora R. Gates, deceased, bearing date the 20th day of September, 1918, and of a codicil thereto bearing date the 20th day of September, 1918: and,

It appearing to the court, and the court so finds, that said Dellora R. Gates is now dead; that in her lifetime and at the time of her death she was a resident citizen of Port Arthur, in the county of Jefferson, and in the State of Texas, having her home therein, and that a part of her estate is located in said county, and that the court has jurisdiction of said estate: and,

It further appearing to the court, and the court so finds, that the citation has heretofore been seasonably issued and seasonably served.

and returned in the manner and for the length of time required by law, so as to justify the hearing of said application at this time; and,

It further appearing to the court from the testimony of Wm. J. Flanagan and Edward M. Crone, two of the three subscribing witnesses of said will dated September 20th, 1918, and of Wm. J. Flanagan and Edward M. Crone, two of the three subscribing witnesses to said codicil dated the 20th day of September, 1918, each of said witnesses having been sworn and examined and his examination having been reduced to writing and subscribed by him in open court and filed, and the court so finds, that said will and said codicil collectively constitute the last will and testament of said Dellora R. Gates, deceased; and,

It further appearing to the court, and the court so finds, that both of said documents were duly and legally executed by said Dellora R. Gates, deceased, in her lifetime and at the respective dates thereof, with all of the formalities and solemnities and under all of the circumstances required by the law of Texas to make and constitute said documents collectively the valid last will and testament of said deceased, and that said testatrix at the respective times of execution of said documents was at least twenty-one years of age, and was of sound mind, and was in all respects competent to make a will and under no restraint; and the court being satisfied of the genuineness of said documents and of the validity of the execution thereof, and the probate thereof not having been contested; and,

It further appearing to the court and the court so finds that said codicil has not been revoked or modified by said testatrix, and that said will has not been revoked or modified by said testatrix except as same was revoked or modified by the provisions of said codicil:

Now, therefore, it is ordered, adjudged, and decreed by the court that said will dated the 20th day of September, 1918, and said codicil dated the 20th day of September, 1918, offered for probate herein collectively, constitute the last will and testament of said Dellora R. Gates, deceased, and is hereby admitted to probate as the last will and testament of said Dellora R. Gates, deceased, valid to pass real and personal property; and,

It is further considered, ordered, adjudged, and decreed by the court that it is adequately provided in said last will and testament that no other action shall be had in the County Court in relation to the settlement of said estate than the probating and recording of said last will and testament and the return of an inventory appraisement and list of claims of said estate, and that said John J. Mitchell, Augustine L. Humes, and Charles E. Herrmann are named in said last will and testament as the independent executors of said estate, and they are hereby appointed independant executors thereof, and as directed by the terms of said last will and testament, they are

exempt from the giving of any bond as such and letters testamentary shall forthwith issue accordingly; and.

It is further considered, ordered, adjudged, and decreed by the court that the testimony of the witnesses William J. Flanagan, Edward M. Crone, Charles E. Herrmann, I. Freundlich, and R. H.

18 Woodworth, as taken in open court, together with Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, and all

other documentary evidence offered and received upon this proceeding be and the same are hereby accepted and approved and ordered to be recorded together with the petition herein and the citation and return thereon, as a part of the record in this proceeding; and,

It is further considered, ordered, adjudged and decreed by the court that said will and said codicil be and they hereby are adopted and made a part of this decree and are set forth in full and are as follows, to wit:

LAST WILL AND TESTAMENT OF DELLORA R. GATES, DECEASED (WITH
CODICIL)

Dated September 20, 1918

I, Dellora R. Gates, a resident and citizen of the State of Texas having my home at Port Arthur, county of Jefferson, in said State, being of sound mind and memory, do hereby make, publish, and declare this document as and for my last will and testament, hereby revoking all and every other will and testamentary expression or disposition by me at any time heretofore made.

First. I direct that all my just debts shall be paid as soon as expedient after my death, and to this end my executors hereinafter named are given power and authority to use and appropriate for that purpose any cash that may be on hand after my death and to sell

19 and convert into cash at public or private sale any and all real property, personal property, stocks, bonds, and other securities such as may constitute a part of my estate not hereinafter specifically bequeathed or devised.

Second. I give and bequeath to Harriet R. Baker, wife of my Brother, Edward J. Baker, of St. Charles, Illinois, if she be living at the time of my death, the sum of one hundred and fifty thousand dollars (\$150,000).

Third. I give and bequeath to Nina Baker, widow of my nephew Henry R. Baker, if she be living at the time of my death, the sum of fifty thousand dollars (\$50,000).

Fourth. I give and bequeath to my friend Elizabeth S. Gurney if she be living at the time of my death, the sum of twenty-five thousand dollars (\$25,000).

Fifth. I give and bequeath to Marie Brownson, of Dubuque Iowa, if she be living at the time of my death, the sum of fifty thousand dollars (\$50,000).

Sixth. I give and bequeath to my brother-in-law, Frank R. Angell, of St. Charles, Illinois, if he be living at the time of my death, the sum of fifty thousand dollars (\$50,000).

Seventh. I give and bequeath to Esther Angell, wife of my brother-in-law, Frank R. Angell, of St. Charles, Illinois, if she be living at the time of my death, the sum of twenty-five thousand dollars (\$25,000).

Eighth. I give and bequeath to Florence Hopwood Judd, of Minneapolis, Minnesota, if she be living at the time of my death, the sum of twenty-five thousand dollars (\$25,000).

Ninth. In case Dellora LaGrone shall be living at the time of my death and shall then have attained the age of twenty-one (21) years, I give and bequeath to her the sum of two thousand five hundred dollars (\$2,500). In case she shall be living at the time of my death but at that time shall not attained the age of twenty-one (21) years, I give and bequeath to my executors and trustees hereinafter named the sum of two thousand five hundred dollars (\$2,500), in trust, to collect the rents, income, and profits thereof and to apply the same, or such portion thereof as my said executors and trustees may deem advisable, for the education, support, and maintenance of said Dellora LaGrone until she shall attain the age of twenty-one (21) years and thereupon to pay the principal over to her, together with any accumulated income thereof.

In case said Dellora LaGrone shall survive me but shall die before she becomes twenty-one (21) years of age, I direct that the principal of said trust fund of two thousand five hundred dollars (\$2,500), together with any accumulated income thereof, shall become and constitute part of my residuary estate and become subject to the provisions hereinafter contained concerning my said residuary estate.

Tenth. In case Dellora Reeve, the daughter of Dr. O. C. Reeve, of New York City, shall be living and shall have attained the age of twenty-one (21) years at the time of my death, I give and bequeath to her the sum of two thousand five hundred dollars (\$2,500). In case she shall be living but shall not have attained the age of twenty-one (21) years at the time of my death, I give and bequeath to my executors and trustees hereinafter named the sum of two thousand five hundred dollars (\$2,500), in trust, to collect the rents, income, and profits thereof and to apply the same, or such portion thereof as they may deem advisable, for the education, support, and maintenance of said Dellora Reeve until she shall attain the age of twenty-one (21) years, and thereupon to pay, transfer, deliver, and convey the principal over to her, together with any accumulated income thereof.

In case said Dellora Reeve shall survive me but shall die before she becomes twenty-one (21) years of age, I direct that the principal of said trust fund of two thousand five hundred dollars (\$2,500), together with any accumulated income thereof, shall be-

come and constitute a part of my residuary estate and become subject to the provisions hereinafter contained concerning my said residuary estate.

Eleventh. In case Dellora Nyilas, the daughter of Francis Nyilas of New York City, shall be living and shall have attained the age of twenty-one (21) years at the time of my death, I give and bequeath to her the sum of two thousand five hundred dollars (\$2,500).

In case she shall be living but shall not have attained the age of twenty-one (21) years at the time of my death, I give and

22 bequeath to my executors and trustees hereinafter named the sum of two thousand five hundred dollars (\$2,500), in trust, to collect the rents, income, and profits thereof and to apply the same, or such portion thereof as they may deem advisable, for the education, support, and maintenance of said Dellora Nyilas until she shall have attained the age of twenty-one (21) years, and thereupon to pay, transfer, deliver, and convey the principal over to her, together with any accumulated income thereof.

In case said Dellora Nyilas shall survive me but shall die before she becomes twenty-one (21) years of age, I direct that the principal of said trust fund of two thousand five hundred dollars (\$2,500), together with any accumulated income thereof, shall become and constitute a part of my residuary estate and become subject to the provisions hereinafter contained concerning my said residuary estate.

Twelfth. I give and bequeath to Sarah A. Scott, of New York City, if she be living at the time of my death, the sum of ten thousand dollars (\$10,000).

Thirteenth. I give and bequeath to May Scott Wheeler, if she be living at the time of my death, the sum of five thousand dollars (\$5,000).

Fourteenth. I give and bequeath to Mary H. King, of St. Louis, Missouri, if she be living at the time of my death, the sum of five thousand dollars (\$5,000).

23 Fifteenth. I give and bequeath to R. Alice Humes, of New York City, if she be living at the time of my death, the sum of ten thousand dollars (\$10,000). In case said R. Alice Humes shall not be living at the time of my death, I direct my executors and trustees hereinafter named to divide the said sum of ten thousand dollars (\$10,000) into such number of separate parts as shall be equal to the number of children of Katharine H. Winter, of Orange, New Jersey, me surviving, and to pay, transfer, deliver, and convey to each of such children as shall have attained the age of twenty-one (21) years at the time of my death one of such separate parts and to hold the remaining separate parts, or all thereof, in case no such child shall have attained the age of twenty-one (21) years at the time of my death, in trust, nevertheless, to collect the rents, income, and profits thereof and to apply the rents, income, and profits upon one of such separate parts, or such portion thereof as they may deem advisable, for the education, support, and maintenance of each such

child as shall not have attained the age of twenty-one (21) years at the time of my death until such child shall attain the age of twenty-one (21) years and thereupon to pay, transfer, deliver, and convey the principal of one such separate part to each such child as shall attain the age of twenty-one (21) years, together with any accumulated income thereof; provided that if any such child shall die prior to attaining the age of twenty-one (21) years without issue, the share of such child so dying, together with the rents, income, and profits thereof theretofore accumulated and thereafter accruing thereon, shall be divided equally among the surviving children, me surviving, of said Katharine H. Winter, and shall be dealt with, applied, and disposed of in accordance with the provisions herein contained with reference to the shares of such survivors and their issue and in like manner, including the further provision that in the event that any such child of Katharine H. Winter, me surviving, shall die prior to attaining the age of twenty-one (21) years, leaving issue, then the share of such child so dying shall be divided equally among such issue.

If said R. Alice Humes shall not be living at the time of my death, and there shall not then be living any child or children of said Katharine H. Winter, or in the event that no such child, me surviving, shall attain the age of twenty-one (21) years, I direct that the principal of said sum of ten thousand dollars (\$10,000), together with any accumulated income thereof, shall become and constitute a part of my residuary estate and become subject to the provisions hereinafter contained concerning my said residuary estate.

Sixteenth. As a mark of my high regard, I give and bequeath to John J. Mitchell, of Chicago, Illinois, if he be living at the time of my death, James C. Hutchins, of Chicago, Illinois, if he be living at the time of my death, and R. H. Woodworth, of Port Arthur, Texas, if he be living at the time of my death, the sum of five thousand dollars (\$5,000) each.

Seventeenth. I give and bequeath to Agnes Jones, wife of Herbert L. Jones, of New York City, if she be living at the time of my death, the sum of five thousand dollars (\$5,000), and if she be not living at the time of my death then I give and bequeath said sum of five thousand dollars (\$5,000) to said Herbert L. Jones.

Eighteenth. I give and bequeath to George C. Scott, son of said Sarah A. Scott, if he be living at the time of my death, the sum of five thousand dollars (\$5,000). In case said George C. Scott shall not be living at the time of my death but shall leave any child or children who shall be living at the time of my death, I direct my executors and trustees hereinafter named to divide said sum of five thousand dollars (\$5,000) into such number of separate parts as shall be equal to the number of such children of said George C. Scott, me surviving, and to pay, transfer, deliver and convey to each of such children as shall have attained the age of twenty-one (21) years at the time of my death one of such separate parts and to hold

the remaining separate parts, or all thereof, in case no such child shall have attained the age of twenty-one (21) years at the time of my death, in trust, nevertheless, to collect the rents, income, and profits thereof and to apply the rents, income, and profits upon one of such separate parts, or such portion thereof as they may deem advisable, for the education, support, and maintenance of each such child as shall not have attained the age of twenty-one (21) years at the time of my death, until such child shall attain the age of twenty-one (21) years, and thereupon to pay, transfer, deliver, and convey

the principal of one such separate part to each such child.

26 shall so attain the age of twenty-one (21) years, together with

any accumulated income thereof; provided that if any such child shall die prior to attaining the age of twenty-one (21) years without issue, the share of such child so dying, together with the rents, income, and profits thereof theretofore accumulated and thereafter accruing thereon, shall be divided equally among the surviving children, me surviving, of said George C. Scott and shall be dealt with applied, and disposed of in accordance with the provisions herein contained with reference to the shares of such survivors and their issues and in like manner, including the further provision that in the event that any such child of George C. Scott, me surviving, shall die prior to attaining the age of twenty-one (21) years leaving issue, then the share of such child so dying shall be divided equally among such issue.

In the event that said George C. Scott shall not be living at the time of my death and shall leave no child who shall survive me who shall attain the age of twenty-one (21) years, I direct that said sum of five thousand dollars (\$5,000), together with any accumulated income thereof, shall form and constitute a portion of my residuary estate and shall be held and disposed of according to the provisions hereinafter contained concerning my said residuary estate.

Nineteenth. I give and bequeath to my executors and trustees hereinafter named the sum of five thousand dollars (\$5,000), in trust, nevertheless, to collect the rents, income, and profits thereof

27 and to apply the same for the education, support, and maintenance of John Tennent, the son of said May Scott Wheeler,

until he shall attain the age of twenty-five (25) years, and then to pay the principal of said trust fund of said five thousand dollars (\$5,000) to said John Tennent. In case said John Tennent shall die prior to attaining the age of twenty-five (25) years, I direct that the principal of said trust fund of five thousand dollars (\$5,000) shall become and constitute a part of my residuary estate and become subject to the provisions hereinafter contained concerning my said residuary estate.

Twentieth. I give and bequeath to John Gates Williams, of St. Louis, Missouri, if he be living at the time of my death, the sum of five thousand dollars (\$5,000).

Twenty-first. I give and bequeath to Charles E. Herrmann, of Scarsdale, N. Y., if he be living at the time of my death, the sum of twenty-five thousand dollars (\$25,000). In case said Chas. E. Herrmann shall not be living at the time of my death but shall leave my child or children who shall be living at the time of my death, direct my executors and trustees hereinafter named to divide the sum of twenty-five thousand dollars (\$25,000) into such number of separate parts as shall be equal to the number of such children of said Charles E. Herrmann, me surviving, and to pay, transfer, deliver, and convey to each of such children as shall have attained the age of twenty-one (21) years at the time of my death one of such separate parts and to hold the remaining separate parts, or all thereof, in case no such child shall have attained the age of twenty-one (21) years at the time of my death, in trust, nevertheless, to collect the rents, income, and profits thereof and to apply the rents, income, and profits upon one of such separate parts, or such portion thereof as they may deem advisable, for the education, support, and maintenance of each such child as shall not have attained the age of twenty-one (21) years at the time of my death, until such child shall attain the age of twenty-one (21) years, and thereupon to pay, transfer, deliver, and convey the principal of one such separate part to each such child as shall so attain the age of twenty-one (21) years, together with any accumulated income thereof; provided that if any such child shall die prior to attaining the age of twenty-one (21) years without issue, the share of such child so dying, together with the rents, income, and profits thereof theretofore accumulated and thereafter accruing thereon, shall be divided equally among the surviving children, me surviving, of said Chas. E. Herrmann and shall be dealt with, applied, and disposed of in accordance with the provisions herein contained with reference to the shares of such survivors and their issue and in like manner, including the further provision that in the event that any such child of Charles E. Herrmann, me surviving, shall die prior to attaining the age of twenty-one (21) years leaving issue, then the share of said child so dying shall be divided equally among such issue.

In case said Charles E. Herrmann shall die prior to the time of my death leaving no children who shall survive me, or in the event that no child of said Charles E. Herrmann, me surviving, shall attain the age of twenty-one (21) years, then I give and bequeath said sum of twenty-five thousand dollars (\$25,000), together with any accumulated income thereof, to his wife, Sarah Herrmann, if she be living at the time of my death, and if she be not living, then I direct that the same shall form and constitute part of my residuary estate and shall be held and disposed of according to the provisions hereinafter contained concerning my residuary estate.

Twenty-second. I give and bequeath to Fellowes Davis, jr., New York City, if he be living at the time of my death, the sum of ten thousand dollars (\$10,000). In case said Fellowes Davis, jr., shall not be living at the time of my death but shall leave any child or children who shall be living at the time of my death, I direct that my executors and trustees hereinafter named to divide the sum of ten thousand dollars (\$10,000) into such number of separate parts as shall be equal to the number of such children of said Fellowes Davis, jr., me surviving, and to pay, transfer, deliver, and convey to each of such children as shall have attained the age of twenty-one (21) years at the time of my death one of such separate parts and to hold the remaining separate parts, or all thereof, in case no such child shall have attained the age of twenty-one (21) years at the time of my death, in trust, nevertheless, to collect the rents, income, and profits thereof and to apply the rents, income, and profits upon one of such separate parts, or such portion thereof as they may

deem advisable, for the education, support, and maintenance
30 of each such child as shall not have attained the age of twenty-

one (21) years at the time of my death, until such child shall attain the age of twenty-one (21) years and thereupon to pay, transfer, deliver, and convey the principal of one such separate part to each such child as shall so attain the age of twenty-one (21) years together with any accumulated income thereof; provided that if any such child shall die prior to attaining the age of twenty-one (21) years without issue, the share of such child so dying, together with the rents, income, and profits thereof theretofore accumulated and thereafter accruing thereon shall be divided equally among the surviving children, me surviving, of said Fellowes Davis, jr., and shall be dealt with, applied, and disposed of in accordance with the provisions herein contained with reference to the shares of such surviving children and their issue and in like manner, including the further provision that in the event that any such child of Fellowes Davis, jr., me surviving, shall die prior to attaining the age of twenty-one (21) years leaving issue, then the share of such child so dying shall be divided equally among such issue.

In the event that said Fellowes Davis, jr., shall not be living at the time of my death and shall leave no child who shall survive him who shall attain the age of twenty-one (21) years, I direct that the sum of ten thousand dollars (\$10,000), together with any accumulated income thereof, shall form and constitute a portion of my residuary estate and shall be held and disposed of according to the provisions hereinafter contained concerning my said residuary estate.

31 Twenty-third. I give and bequeath to Wayne C. Bogue, Detroit, Michigan, if he be living at the time of my death, the sum of five thousand dollars (\$5,000). In case said Wayne C. Bogue shall not be living at the time of my death but shall leave any child or children who shall be living at the time of my death, I direct that my executors and trustees hereinafter named to divide the sum of five thousand dollars (\$5,000)

thousand dollars (\$5,000) into such number of separate parts as shall be equal to the number of such children of said Wayne C. Bogue, me surviving, and to pay, transfer, deliver, and convey to each of such children as shall have attained the age of twenty-one (21) years at the time of my death one of such separate parts and to hold the remaining separate parts, or all thereof, in case no such child shall have attained the age of twenty-one (21) years at the time of my death, in trust, nevertheless, to collect the rents, income, and profits upon one of such separate parts, or such portion thereof as they may seem advisable, for the education, support, and maintenance of each child as shall not have attained the age of twenty-one (21) years at the time of my death, until such child shall attain the age of twenty-one (21) years, and thereupon to pay, transfer, deliver, and convey the principal of one such separate part to each such child as shall so attain the age of twenty-one (21) years, together with any accumulated income thereof; provided that if any such child shall die prior to attaining the age of twenty-one (21) years without issue, the share of such child so dying, together with the rents, income, and profits thereof theretofore accumulated and thereafter accruing thereon shall be divided equally among the surviving children, me surviving, of said Wayne C. Bogue, and shall be dealt with, applied, and disposed of in accordance with the provisions herein contained with reference to the shares of such survivors and their issue and in like manner, including the further provision that in the event that any such child of Wayne C. Bogue, me surviving, shall die prior to attaining the age of twenty-one (21) years leaving issue, then the share of such child so dying shall be divided equally among such issue.

In the event that said Wayne C. Bogue shall not be living at the time of my death and shall leave no child who shall survive me who shall attain the age of twenty-one (21) years, I direct that said sum of five thousand dollars (\$5,000), together with any accumulated income thereof, shall form and constitute a portion of my residuary estate and shall be held and disposed of according to the provisions hereinafter contained concerning my said residuary estate.

Twenty-fourth. I give and bequeath to Charles G. Smith, of Rye, New York, if he be living at the time of my death, the sum of five thousand dollars (\$5,000).

Twenty-fifth. I give and bequeath to my secretary, Gillison C. Lott, if he be living at the time of my death, the sum of twenty-five thousand dollars (\$25,000). In case said Gillison C. Lott be not living at the time of my death, I give and bequeath said sum of twenty-five thousand dollars (\$25,000) to his daughter, Emma Lott, in case she be living at the time of my death and shall at that time have attained the age of twenty-one (21) years; but in the event that she be living at the time of my death and has not attained the age of twenty-one (21) years, I give and bequeath said sum of twenty-five thousand dollars (\$25,000) to my executors

and trustees hereinafter named, in trust, nevertheless, to collect rents, income, and profits thereof and to apply the same, or such portions thereof as they may deem advisable, for the education, support and maintenance of said Emma Lott until she shall attain the age of twenty-one (21) years, and then to pay, transfer, deliver, and convey the principal to her, together with any accumulated income thereof.

In case said Gillison C. Lott shall not be living at the time of my death, but his said daughter, Emma Lott, shall then be living but shall die prior to the time when she attains the age of twenty-one (21) years, I direct that the principal of said sum of twenty-five thousands dollars (\$25,000), together with any accumulated income thereof, shall become and constitute a part of my residuary estate and become subject to the provisions hereinafter contained concerning my said residuary estate.

Twenty-sixth. In case Katharine Martin, daughter of M. D. Martin, of New York City, shall be living at the time of my death and shall then have attained the age of twenty-one (21) years, I give and bequeath to her the sum of five thousand dollars (\$5,000). If

case she be living at the time of my death and at that time has not attained the age of twenty-one (21) years, I give and bequeath to my executors and trustees hereinafter named the sum of five thousand dollars (\$5,000), in trust, to collect the rents, income and profits thereof and to apply the same, or such portions thereof as they may deem advisable, for the education, support, and maintenance of said Katharine Martin until she shall have attained the age of twenty-one (21) years, and thereupon to pay, transfer, deliver, and convey the principal over to her, together with any accumulated income thereof.

In case said Katharine Martin shall die before she becomes twenty-one (21) years of age, I direct that the principal of said sum of five thousand dollars (\$5,000), together with any accumulated income thereof, shall become and constitute a part of my residuary estate and become subject to the provisions hereinafter contained concerning my said residuary estate.

Twenty-seventh. I give and bequeath to Mrs. Jennie M. Gates Shane, of Durand, Michigan, if she be living at the time of my death, the sum of ten thousand dollars (\$10,000).

Twenty-eighth. I give and bequeath to Mrs. Susan August Gates Tuttle, of Durand, Michigan, if she be living at the time of my death, the sum of ten thousand dollars (\$10,000).

Twenty-ninth. I give and bequeath to Lavern Seanor, of West Chicago, Illinois, if she be living at the time of my death, the sum of ten thousand dollars (\$10,000).

35 Thirtieth. I give and bequeath to S. W. Gates, of Durand, Michigan, if he be living at the time of my death, the sum of ten thousand dollars (\$10,000).

Thirty-first. I give and bequeath to Nellie Madden, of Port Arthur, Texas, if she be in my employ at the time of my death, the sum of two thousand dollars (\$2,000).

Thirty-second. I give and bequeath to Mrs. W. H. Achey, of Port Arthur, Texas, if she be in my employ at the time of my death, the sum of two thousand dollars (\$2,000).

Thirty-third. I give and bequeath to Maggie Higgins, of Chicago, Illinois, if she be living at the time of my death, the sum of five hundred dollars (\$500).

Thirty-fourth. I give and bequeath to Margaret Harms, if she be living at the time of my death, the sum of one thousand dollars (\$1,000).

Thirty-fifth. I give and bequeath to Bernard Harms, if he be in my employ at the time of my death, the sum of two thousand dollars (\$2,000).

Thirty-sixth. I give and bequeath to Karl Ziehr, if he be living at the time of my death, the sum of one thousand dollars (\$1,000).

Thirty-seventh. I give and bequeath to Francis Nyilas, if he be in my employ at the time of my death, the sum of two thousand dollars (\$2,000).

Thirty-eighth. I give and bequeath to Albert Moreau, if he be in my employ at the time of my death, the sum of two thousand dollars (\$2,000).

Thirty-ninth. I give and bequeath to Clarence L. Briggs, if he be living at the time of my death, the sum of one thousand dollars (\$1,000).

Fortieth. I give and bequeath to William S. Heeg, if he be living at the time of my death, the sum of one thousand dollars (\$1,000).

Forty-first. I give and bequeath to Ella Rehwoldt, of Chicago, Illinois, if she be living at the time of my death, the sum of one thousand dollars (\$1,000).

Forty-second. I give and bequeath to my maid, Marie Ziehr, the sum of five thousand dollars (\$5,000), provided she shall be in my employ at the time of my death.

Forty-third. I give and bequeath to my butler, Nathan F. Bennett, the sum of five thousand dollars (\$5,000), provided he shall be in my employ at the time of my death.

Forty-fourth. I give and bequeath to Mary Fitzpatrick, now a maid at the Plaza Hotel in New York City, provided she shall be in my service at the time of my death, the sum of five thousand dollars (\$5,000).

Forty-fifth. I give, devise, and bequeath to my niece Dellora F. Angell, of St. Charles, Illinois, my home and residence at Port Arthur, Texas, consisting of about seven (7) acres of land, and all the buildings thereon and appurtenances thereunto belonging: also, my stable and garage at No. 103 West 52d Street, New York City, together with all my automobiles and the appurtenances thereunto belonging: also, the property owned by me at Tomahawk Lake, Wisconsin; also, all of the furniture, bric-a-brac, gold and silver plated wares and house furnishings, of every kind and character, which I may own at the time of my death; also, all of the paintings of which I shall die possessed, wheresoever they may be, and all of my jewelry, precious stones, and other personal effects.

In the event that my said niece, Dellora F. Angell, shall not be living at the time of my death, I give, devise, and bequeath all of the real and personal property hereinbefore mentioned in this paragraph numbered "Forty-fifth" of this, my will, excepting the paintings hereinbefore mentioned, to my brother, Edward J. Baker, of St. Charles, Illinois, if he be living at the time of my death; and in the event that my said niece, Dellora F. Angell, shall not be living at the time of my death, I give and bequeath all the paintings of which I shall die possessed to the Metropolitan Museum of Art in the city of New York, a corporation constituted and created under the laws of the State of New York.

Forty-sixth. I give and bequeath to the Woodlawn Cemetery, a corporation organized and existing under the laws of the

State of New York, the sum of twenty-five thousand dollars
38 (\$25,000), in trust, however, to apply the income arising

therefrom, under the direction of the directors, to the repair, preservation, or renewal of any mausoleum, monument, or other structure in or on lot No. 12,895 in sections 134 and 135, Pine Plot, in the cemetery grounds of said corporation situated in the city of New York, county of Bronx, and to the planting and cultivating of trees, shrubs, flowers, and plants in and around said lot, and to apply the surplus thereof, if any, to the embellishment and improvement of said lot.

Forty-seventh. I give and bequeath to Mary Gates Hospital, Port Arthur, Texas, the sum of ten thousand dollars (\$10,000).

Forty-eighth. I give and bequeath to Port Arthur College, Port Arthur, Texas, the sum of ten thousand dollars (\$10,000).

Forty-ninth. I give and bequeath to the St. Charles School for Boys, of St. Charles, Illinois, the sum of one thousand dollars (\$1,000).

Fiftieth. I give and bequeath to my brother, Edward J. Baker, of St. Charles, Illinois, if he be living at the time of my death, the sum of five hundred thousand dollars (\$500,000).

Fifty-first. All the rest, residue, and remainder of my property both real and personal, of every kind and description whatsoever and wheresoever situated, which shall belong to me or be subject to

my disposition, including all property over which I may now
39 or hereafter have any power of appointment (all whereof is hereinafter referred to as my "residuary estate"), I give, devise, bequeath, and appoint to my executors and trustees hereinabove named; in trust, nevertheless, to hold, pay, transfer, convey, and dispose thereof and of the rents, income, and profits thereof, upon the following trusts and upon and subject to the following conditions, directions, and limitations, namely:

I. For the period of two (2) years subsequent to the time of my death or for a shorter period at the election of my executors and trustees expressed by them in writing at any time within said two (2) years (no such period, however, to extend longer than the date of the death of the survivor of my brother, Edward J. Baker,

and my niece, Dellora F. Angell), to collect the rents, income, and profits thereof, and to apply one-half ($\frac{1}{2}$) thereof or such portion of such one-half ($\frac{1}{2}$) thereof as they may deem advisable for the education, support, and maintenance of my said niece, Dellora F. Angell, and the balance thereof to pay, utilize, and apply for and account of any taxes, debts, or charges, governmental or otherwise, payable by or out of my estate.

II. As of the date of and upon the termination of the period during which my executors and trustees are authorized and directed by the foregoing provisions of paragraph "I" of this article

"Fifty-first" of this my will to collect, apply, pay, and utilize, as therein provided, the rents, income, and profits of my residuary estate, or as of the date of my death if for any reason the foregoing provisions of said paragraph "I" of this article can not legally be carried into effect, to divide my residuary estate into two (2) equal shares and,

(1) If my said niece, Dellora F. Angell, shall not then have attained the age of twenty-one (21) years, to collect the rents, income, and profits upon one of such two (2) equal shares; to apply the same, or such portion thereof as they may deem advisable, for the education, support and maintenance of my said niece until she shall attain the age of twenty-one (21) years; to accumulate the balance thereof; and, upon my said niece attaining the age of twenty-one (21) years, to pay, transfer, deliver, and convey unto her said accumulated income, if any;

(2) If my said niece shall have attained the age of twenty-one (21) years at the time as of which said division of my residuary estate into two (2) equal shares as hereinbefore provided to be made, then from that time; but, if she shall not then have attained the age of twenty-one (21) years, then from the time when she shall attain the age of twenty-one (21) years and thereafter and until she shall attain the age of thirty (30) years, to pay the net income upon said equal share to her in semiannual installments and upon her attaining the age of thirty (30) years thereupon to transfer, deliver, and convey to her a one-fourth ($\frac{1}{4}$) part of said equal share;

(3) Upon my said niece attaining the age of thirty (30) years thereafter and until she shall attain the age of thirty-five (35) years, to pay to her in semiannual installments the net income upon the balance of said equal share remaining in the hands of my executors and trustees during said period and, upon her attaining the age of thirty-five (35) years, to pay, transfer, deliver, and convey her one-third ($\frac{1}{3}$) of the balance of said equal share than remaining in the hands of my executors and trustees;

(4) Upon my said niece attaining the age of thirty-five (35) years and thereafter and until she shall attain the age of forty (40) years, to pay to her in semiannual installments the net income upon the balance of said equal share remaining in the hands of my executors and trustees during said period and, upon her attaining the age of

to all or such balance of the first of said equal shares disposed of by this article as may then and thenceforth remain in their hands, and

(10) If my said brother shall not die prior to the time as of which said division of my residuary estate is hereinbefore provided to be made; if at the time of his death all of the principal of the first of said equal shares disposed of by this article shall have become payable and distributable to the persons entitled thereto hereunder and if at the time of his death either my said niece or issue of my said niece shall be living, to pay, transfer, deliver, and convey all of the principal of the second of said two (2) equal shares to my said niece if she be then living or if she be not then living then to her issue, per stirpes and not per capita

III. In case payment, application, or distribution cannot be made by my said executors and trustees of the principal of said trust funds hereinbefore created and provided for by the foregoing provisions of this article numbered "Fifty-first" of this, my will, or

the rents, income, and profits thereof, or of any part of said trust funds or of such rents, income, and profits, because at

the time or times when such disposition is hereinbefore directed to be made the person or persons entitled thereto shall not be living, then and thereupon, but only in such event, I direct that all or such portion of said trust funds and of the rents, income and profits thereof not effectually disposed of as aforesaid shall be divided into two (2) equal parts, to be held and disposed of by my said executors and trustees in the manner and under and subject to the conditions, directions, and limitations set forth in the following subdivision "(a)" and "(b)" of this paragraph:

(a) I give, devise, and bequeath to my executors and trustees one of such equal parts, in trust, nevertheless, for the erection, creation, maintenance, and endowment of an old people's home to be known as the "Gates Old People's Home" and to be located near West Chicago, Du Page County, Illinois. It is my wish that those eligible for admission to the home shall be old people of either sex and of reduced circumstances, who have been residents of either Du Page County or Kane County, Illinois, or both said counties, for not less than three (3) years prior to admission, and that they shall be allowed to stay in the home during their natural life if they wish to do so; provided, however, that my executors and trustees may in their discretion permit old people residing elsewhere to be admitted to said home.

48 I recommend that my said executors and trustees shall cause to be incorporated a body corporate under the laws of the State of Illinois for the purpose of founding, establishing and maintaining the said home to be known as the "Gates Old People's Home," to be located near West Chicago, Du Page County, Illinois, for the purposes hereinbefore set forth and for the purpose of taking over and receiving possession of and holding the said fund hereinbefore provided to be used for said purposes, where with to be found, conduct, and maintain such home as aforesaid

In the event that it shall be inexpedient in the judgment of my said executors and trustees to adopt the plan above outlined for the establishment of said home, then and in such event I hereby request and direct that my said executors and trustees shall so administer the said trust as to secure by some other means and in some other legal manner the same objects and purposes which would have been accomplished had the method above set forth been followed.

(b) I give, devise, and bequeath the second of said two (2) equal parts to my said executors and trustees, in trust, nevertheless for the erection, creation, maintenance, and endowment of a children's home or homes, to be known by such name or names as my said executors and trustees shall select, and to be located at such place or places as they shall determine. It is my intention that the children who shall be admitted to such home or homes shall be of reduced circumstances and that they shall be allowed to remain in the home to which they are admitted up to such age, not beyond the period of their minority, as my executors and trustees may determine.

I confide to the discretion of my executors and trustees the question of whether any body or bodies corporate shall be incorporated under the laws of the State or States wherein such home or homes shall be located, and I request and direct that my said executors and trustees shall so administer the said trust as to secure by any lawful means or in any lawful manner the objects and purposes hereinbefore set forth.

Fifty-second. I hereby nominate, constitute, and appoint John J. Mitchell, of Chicago, Illinois, Augustine L. Humes, of New York City, and Charles E. Herrmann, of Scarsdale, New York, the executors of my will and trustees of every trust created thereby. In the event of the death before or after my death of any individual or individuals hereinbefore named as an executor and trustee or as executors and trustees of my will, or upon the resignation, incapacity, or failure to qualify before my estate shall be wound up or while any trust created or established by my will continues in existence, of any individual or individuals hereinbefore named as an executor and trustee or as executors and trustees of my will or of any individual or individuals who shall have qualified as an executor or trustee or as executors and trustees thereof, I hereby nominate, constitute, and appoint the Illinois Trust & Savings Bank, of Chicago, Illinois, as an executor of my will and trustee of every trust created thereby, in the place and stead of such individual or individuals, hereinbefore named as an executor and trustee or as executors and trustees, as shall die, resign, become incapacitated or fail to qualify as aforesaid. In any such event the Illinois Trust & Savings Bank, upon its qualification as such executor or trustee, shall act as such jointly and together with any of the said individuals above named who shall still remain executors or trustees and shall act as sole executor and trustee upon the death, resignation, incapacity, or failure to qualify of all of the

individuals hereinbefore named as executors and trustees. In case the said Illinois Trust & Savings Bank shall for any reason be unable or unwilling to act as such executor or trustee or shall fail to qualify as such executor or trustee, in any event hereinbefore stated upon the happening whereof it is hereby appointed executor and trustee, or, having qualified as such executor or trustee, shall resign, then and thereupon I nominate, constitute and appoint the Equitable Trust Company of New York as such executor and trustee, subject to the same conditions and limitations herein set forth with reference to the said Illinois Trust & Savings Bank. Neither the failure nor the inability of the said Illinois Trust & Savings Bank or of the said the Equitable Trust Company of New York to qualify or continue to act, in any event hereinbefore stated,

as executor or trustee, shall affect, alter, or impair the appointment of any of the individuals hereinbefore specifically named as executors and trustees or the powers, authority, and duties conferred and imposed upon any of them as an executor or trustee of my will.

I request and direct that neither my executors and trustees hereinbefore named, whether as executors or as trustees, nor any others who have life interests in any property bequeathed or devised by my will, shall be required to give any bond of any kind or nature for the performance of their trusts or for any other purpose.

Fifty-third. It is my will, and I direct, that no person who may be at the time entitled to any share, either of the income or of the principal of any trust fund provided by this will, shall have the right or power to anticipate or encumber in any wise the said share either of principal or of income to be received from said trust, or to give orders in advance for the same on my executors or trustees.

Fifty-fourth. Should any of the beneficiaries under this, my will, or under any codicil thereto, object to the probate thereof or in any wise, directly or indirectly, contest or aid in contesting the same or any of the provisions thereof or the distribution of my estate thereunder, then and in that event I annul any bequest or devise made to such beneficiary, and it is my will that such beneficiary shall be absolutely barred and cut off from any share in my estate and the bequest or devise that would have otherwise gone to such beneficiary.

I direct shall constitute a part of my residuary estate.
52 Fifty-fifth. Should any or either of the provisions of this will fail or be held ineffectual or invalid for any reason, it is my will that no other portion or provision of this will be invalidated, impaired, or affected thereby, but that this will be construed as if such invalid provision or direction had not been herein contained.

Fifty-sixth. I direct that all the legacies and annuities given by me in this, my will, shall be paid and delivered free of legacy duty and all other duties.

Fifty-seventh. I hereby authorize and empower my said executors and their successors, in their discretion, to sell or dispose of any

all of my personal estate of every name and kind and wheresoever situated not herein specifically bequeathed, including stocks, bonds, and securities of all kinds, at public or private sale, and to invest and reinvest the proceeds thereof from time to time.

Fifty-eighth. I authorize and empower my said executors and their successors, in their discretion, to sell and convey at public or private sale, at such time or times, for cash or on credit, or partly for cash and partly on credit, and upon such terms and conditions as to them seem best, any and all real estate which shall belong to me or to which I shall be entitled at the time of my death, except such as is hereby specifically devised, and to make, execute, and deliver my and all deeds or other instruments necessary or proper to carry any such sale into effect.

Fifty-ninth. I authorize and empower my executors and their successors, in their uncontrolled discretion, from time to time, and for such reasonable periods, not to exceed any limit of time imposed by law, and on such terms and conditions as they may deem proper, to let or lease any and all real estate which shall belong to me or to which I shall be entitled at the time of my death, except such as is hereby specifically devised, and to make, execute, and deliver any and all instruments of lease which may be necessary proper to carry any such lease into effect.

Sixtieth. I authorize and empower my executors and their successors, in their uncontrolled discretion, to deliver, in lieu of cash, to my person or persons to whom any cash bequest is hereby made, stocks, bonds, or other securities or property which shall belong to me at the time of my death but which is not herein specifically bequeathed or devised, provided that such securities or property so delivered shall be of a market value equivalent to the amount of such bequest or bequests.

Sixty-first. In the division and distribution of my residuary estate, or of the principal or income of any trust provided to be created by this my will, I authorize and empower my executors and trustees and their successors, in their uncontrolled discretion, to deliver to the person or persons entitled thereto under the provisions of this my will, the portion of any particular kind of personal property of which I may die possessed and to which such person is entitled, in kind, provided such property is capable of division in kind, and without any obligation on the part of my executors and trustees or their successors to make any sale thereof for the purpose of making such division and distribution.

Sixty-second. I authorize and empower my executors and their successors to retain unsold, so long as in their uncontrolled discretion they shall see fit, all or any stocks, bonds, or other securities or property which shall belong to me at the time of my death but which are not hereby specifically bequeathed or devised, although such bonds, stocks, or other securities or property are not of a character such as trustees or executors are allowed to invest in or to retain under the laws of the State of Texas or of any other State, and in

their uncontrolled discretion to sell all or any part thereof and to exchange the same for and to reinvest the proceeds of any sale thereof or of any stocks, bonds, or other securities or property at any time held by them in any securities or property which now are or hereafter shall be authorized by the laws of the State of Texas or by the laws of the State of Illinois or the State of New York as investments for trust funds, and also in any of the bonds, notes or other securities or the capital stock of any corporation organized under the laws of the United States or of any State of the United States, or of any Territory of the United States, which has paid dividends on all classes of its capital stock for five (5) consecutive years previous to the investment in such bonds or notes or other securities or capital stock.

Neither my executors nor their successors shall, except in case of bad faith, be liable for any loss or damage resulting from the retention of any stock,

bonds, or other securities or property owned by me at the time of my death or from any investments or reinvestments made or action taken in pursuance of the provisions of this article of my will.

Sixty-third. I authorize and empower my executors and their successors, in their uncontrolled discretion, to consent to the reorganization or consolidation or the readjustment of the finances of any corporation or the sale to another corporation or person of the property of any corporation, the bonds, notes, or other securities or the capital stock of which are held by it or them, and do any acts with reference to such bonds, notes, or other securities or capital stock necessary or proper to enable it or them to obtain the benefit of any such reorganization, readjustment, consolidation or sale, and in case any of the bonds, notes, or other securities or capital stock so held at any time contain an option or options to the holder thereof to convert the same into other bonds or notes or other securities or capital stock, or in case the right shall be given to the holders of such bonds or notes or other securities or capital stock so held to subscribe for additional bonds or stocks or other securities or capital stock, I further authorize and empower my executors and their successors, in their uncontrolled discretion, to exercise such option or options and to make such conversions and subscriptions and to make any necessary payments therefor and to hold such

bonds, notes, or other securities or capital stock so acquired as investments for my estate. Neither my executors nor their

successors shall, except in case of bad faith, be liable for any loss or damage resulting from any action taken under the provisions of this article of my will; and except in case of bad faith, the judgment of my said executors regarding the value of any property set aside to constitute the principal of any trust created by this, my will, or regarding the relative values of any shares or parts thereof, shall be conclusive.

Sixty-fourth. I authorize and empower my trustees or trustee for the time being of any trust by my will created to accept as part of the trust estate from my executors or their successors, at the fair

value thereof, as may be agreed upon by such trustees or trustee and my executors or their successors, any stocks, bonds, or other securities or property belonging to me at the time of my death or in which my executors or their successors may have invested any part of my estate and to retain as investments of the trust estate for so long as such trustees or trustee shall see fit, any stocks, bonds, or other securities or property so received from my executors or their successors, although such stocks, bonds, or other securities or property so retained may not be of such character as trustees are permitted to invest in by the laws of the State of Texas, or of any other State; and in their discretion to sell all or any part thereof and to exchange the same for and to reinvest the proceeds of any sale hereof, or of any stocks, bonds, or other securities or property at any time held by them, in any securities or property which now are or hereafter shall be authorized by the laws of the State of Texas or by the laws of the States of Illinois or New York, as investments for trust funds, and also in any of the bonds, notes or other securities or the capital stock of any corporation organized under the laws of the United States or of any State of the United States or of any Territory of the United States which has paid dividends on all classes of its capital stock for five (5) consecutive years previous to the investment in such bonds or notes or other securities or capital stock. My trustees shall not, except in case of bad faith, be liable for any loss or damage resulting from the retention by them of any stocks, bonds, or other securities or property owned by me at the time of my death or from any investments or reinvestments made or action taken in pursuance of the provisions of this article of my will. The trustees or trustee for the time being of any trust created by this, my will, are authorized to retain any real estate or to accept as part of the trust estate any real estate which I may leave at the time of my death, except such as is hereby specifically devised.

Sixty-fifth. I authorize and empower the trustees or trustee for the time being of any trust by my will created, in the uncontrolled discretion of such trustees or trustee, to consent to the reorganization or consolidation or the readjustment of the finances of any corporation or the sale to another corporation or person of the property of any corporation, the bonds, notes, or other securities or the capital stock of which are held by them, and to do any act with reference to such bonds, notes, or other securities or capital stock necessary or proper to enable them to obtain the benefit of any such reorganization, readjustment, consolidation, or sale, and in case any of the bonds, notes, or other securities or capital stock so held shall at any time contain an option or options to the holders thereof to convert the same into other bonds, notes or other securities or capital stock, or in case the right shall be given to the holders of such bonds or notes or other securities or capital stock so held to subscribe for additional bonds or

No. 1619.—Last will and testament of Dellora R. Gates. Dated September 20, 1918. Filed the 10th day of Dec., 1918. A. C. Walker, county clerk, Jefferson County, Texas. By E. J. Keasler, deputy.

I, Dellora R. Gates, of Port Arthur, Jefferson County, Texas, do hereby make, publish, and declare this as and for a codicil to my last will and testament, which I have heretofore made on the twentieth day of September, one thousand nine hundred and eighteen.

First. I give and bequeath twenty-five thousand dollars (\$25,000) to Augustine L. Humes of the city of New York.

Second. In case Roberta Lavern Angell, the daughter of my brother-in-law, Frank R. Angell, of St. Charles, Illinois, shall be living at the time of my death and shall then have attained the age of twenty-one (21) years, I give and bequeath to her the sum of five thousand dollars (\$5,000). In case she shall be living at the time of my death, but at that time shall not have attained the age of twenty-one (21) years, I give and bequeath to my executors and trustees hereinafter named the sum of five thousand dollars (\$5,000) in trust to collect the rents, income, and profits thereof and to apply the same or such portion thereon as my said executors and

trustees may deem advisable for the education, support, and
63 maintenance of said Roberta Lavern Angell until she shall
attain the age of twenty-one (21) years, and thereupon to
pay, transfer, deliver, and convey the principal over to her, together
with any accumulated income thereof.

In case said Roberta Lavern Angell shall survive me, but shall die before she becomes twenty-one (21) years of age, I direct that the principal of said trust fund of five thousand dollars (\$5,000), together with any accumulated income thereof, shall become and constitute a part of my residuary estate and shall become subject to the provisions contained in my last will and testament concerning my said residuary estate.

Third. I give and bequeath to Albert Haeussler, if he be in my employ at the time of my death, the sum of two thousand dollars (\$2,000).

In witness whereof I have hereunto signed my name and affixed my seal this twentieth day of September, one thousand nine hundred and eighteen.

DELLORA R. GATES. [SEAL.]

Signed and subscribed at the end and sealed by said Dellora R. Gates, the testatrix named in the foregoing codicil, in the presence of us; and at the time of such signing and subscription the above instrument was declared by the said testatrix to be a codicil to her last

will and testament and then we and each of us, at the request
64 of said testatrix, in her presence and in the presence of one
another, did sign our names as witnesses thereto at the end

of said codicil. And the said Dellora R. Gates then and there acknowledged to each and all of us that she signed said instrument and that the signature attached at the end thereof was her signature.

W. W. BRUCE,

Residing at Forest Hills, New York.

EDWARD M. CRONE,

Residing at 121 East 82nd St., New York City.

WM. J. FLANAGAN,

Residing at 1484 St. Nicholas Ave., New York City.

No. 1619.—Codicil to the last will and testament of Dellora R. Gates. Dated September 21st, 1918. Filed the 10th day of Dec., 1918. A. C. Walker, county clerk, Jefferson County Texas. By E. J. Keasler, deputy.

And

It is further considered, ordered, adjudged, and decreed by the court that J. W. Williams, Jan Van Tyen, and P. A. Heisig, all citizens of Jefferson County, Texas, be, and they are hereby, appointed appraisers in this behalf, and in connection with the executors they will return into court a proper inventory and appraisement.

W. M. CARROLL,

County Judge.

No. 1619.—In the matter of the estate of Dellora R. Gates, deceased. Decree of court admitting last will and testament of Dellora R. Gates, deceased, to probate.

LETTERS TESTAMENTARY

THE STATE OF TEXAS,

County of Jefferson.

In County Court, Jefferson County, Texas, January term, A. D. 1919. I. A. C. Walker, clerk of the County Court of Jefferson County, Texas, do hereby certify that on the 6th day of January, A. D. 1919, John J. Mitchell, Charles E. Herrmann, and Augustine L. Humes were duly granted by said court letters testamentary of the state of Dellora R. Gates, deceased, and that they qualified as such executors on the 6th and 8th days of January, A. D. 1919, as the law requires.

Witness my hand and seal of office, at Beaumont, Texas, this 8th day of January, A. D. 1919.

[SEAL]

A. C. WALKER,

Clerk County Court, Jefferson County, Texas.

By E. J. KEASLER,

Deputy.

No. 1619.—Estate of Dellora R. Gates, deceased. Letters testamentary to John J. Mitchell, Charles E. Herrmann, and Augustine L. Humes as executors. Issued the 18th day of January A. D. 1919. A. C. Walker, clerk County Court, Jefferson County, Texas. By E. J. Keasler, deputy.

THE STATE OF TEXAS,

County of Jefferson, ss:

I, A. C. Walker, clerk of the County Court in and for the county of Jefferson, in the State of Texas, which court is a court of record having the seal which is affixed hereto, do hereby certify and attest that the foregoing is a full, true, and correct copy (a) of the decree of said court probating the last will and testament of Dellora R. Gates, deceased, dated September 20, 1918, and the codicil thereto, also dated September 20, 1918, and directing the issuance of letters testamentary, said decree containing a full, true, and correct copy of the originals of said last will and testament and of said codicil, and (b) of the letters testamentary issued under and pursuant to said decree to John J. Mitchell, Augustine L. Humes, and Chas. E. Herrmann.

And I further certify and attest that I am the clerk of the County Court in and for the county of Jefferson, in the State of Texas; that said court has jurisdiction and is duly authorized by the laws of the State of Texas to admit wills to probate and to grant letters testamentary and of administration, and to keep the same and the records thereof; and that I am such clerk and person in whose custody the said records are required by law to be and in whose office the same are required by law to be filed.

And I do further certify and attest that I have carefully compared the foregoing copy of the said decree with the original thereof on file and preserved in the office and custody of the clerk of the County Court in and for the county of Jefferson and State of Texas, and in my said office and custody as such clerk and that the foregoing is a full, true, and correct copy of said decree and 67 of the whole thereof; and that the said copy of said letter testamentary is a full, true, and correct copy of the letter testamentary duly granted by the said court to the said John J. Mitchell, Augustine L. Humes, and Chas. E. Herrmann on the 14th day of January, 1919.

In witness whereof I have hereunto set my hand and affixed the seal of said court, which is my official seal, at Beaumont, Texas, this 24th day of January, 1919.

A. C. WALKER,
*Clerk of the County Court in and for the
County of Jefferson, in the State of Texas.*

THE STATE OF TEXAS,

County of Jefferson, ss:

I, W. M. Carroll, the judge of the County Court in and for the county of Jefferson, in the State of Texas, do hereby certify and

attest that A. C. Walker, whose name appears affixed to the foregoing certificate and attestation, is the clerk of the said County Court, which court is a court of record having a seal and has jurisdiction and is duly authorized by the laws of the State of Texas to admit wills to probate and to grant letters testamentary and of administration and to keep the same and the records thereof; that said A. C. Walker was clerk of said court at the time of the making and subscribing of the foregoing certificate and attestation; that the signature affixed to the foregoing certificate and attestation of the said

A. C. Walker, as such clerk of said court, is the genuine signature of the said A. C. Walker, as such clerk; that the seal affixed to said certificate and attestation is the seal of the said County Court in and for the county of Jefferson, in the State of Texas, and is the official seal of the said A. C. Walker, as clerk of said court; that said office of the clerk of said court is the office wherein the said records mentioned in said certificate and attestation are required by law to be filed and preserved; that said A. C. Walker, as such clerk of said court, is the officer in whose custody the said records are required by law to be, and that said A. C. Walker, as clerk of said court, is the proper officer to execute the said certificate and attestation, and that the said certificate and attestation is in due form and is in accordance with the laws of the State of Texas.

In witness whereof I have hereunto set my hand in my official character as the judge of the County Court in and for the county of Jefferson, in the State of Texas, at Beaumont, Texas, this 24th day of January, 1919.

[SEAL.]

W. M. CARROLL,

*The Judge of the County Court in and for the
County of Jefferson, in the State of Texas.*

THE STATE OF TEXAS,

County of Jefferson, ss:

I, A. C. Walker, clerk of the County Court in and for the county of Jefferson, in the State of Texas, which court is a court of record having a seal, which is affixed hereto, do hereby certify and attest that W. M. Carroll, whose name is subscribed to the foregoing certificate of due certification and attestation, was, at the time of signing the same, the judge of the County Court in and for the county of Jefferson, in the State of Texas, duly commissioned, qualified, and authorized by law to execute said certificate and attestation; and I do further certify and attest that the signature of the judge above named to the said certificate of due certification and attestation is genuine, and that full faith and credit are due to all his official acts as such judge.

In witness whereof I have hereunto set my hand and affixed the seal of said court, which is my official seal, at Beaumont, Jefferson County, Texas, this 24th day of January, 1919.

[SEAL.]

A. C. WALKER,

*Clerk of the County Court in and for the
County of Jefferson, in the State of Texas.*

Exhibit "B" (cont'd.)

Top of Instructions INSTRUCTIONS FOR FILING IN INDIVIDUAL INCOME TAX RETURN

73

A. INCOME FROM BUSINESS OR PROFESSION.

Report here income from—
(a) sale of merchandise, or products of manufacturing, construction, mining, and agriculture. (For farm income see Instruction V on the reverse side of this sheet.)

(b) Business services, such as insurance, medical, dental, legal, accounting, hotel, restaurant, and other services, etc., if you conduct the business. If you were engaged in the business as an employee, report your salary or wages in Schedule B.

(c) A profession, such as medicine, law, or dentistry, if you practice it on your own.

In general, report in Schedule A any income in the carrying of which you incurred expenses for labor, rent, etc. Do not report here partnership profits or profits of personal service corporations, which should be reported under C, dividends from other partnerships, or interest in Schedule B.

If you are a partner in a firm enter netting your share to another person on sheet, enter in Item 22 net income from business, as shown by your Schedule of Partnership Income and Deductions.

If you are a partner sharing in a business concern, report such income instead of cost saved, and report expenses incurred in operation of a business paid.

Income received from sale of land, machinery, equipment, stocks, bonds and other property not used in a business, and from liquidating dividends, should be reported.

If you have a complete profit and loss statement, showing all the information called for under Items 12 and 13, attach it to this return, which will be the return of your business, and attach copy of statement to line 22, Schedule A.

Kind of Business.—Any kind of goods sold in or kind of service rendered, and whether manufacturer, retailer, wholesaler, importer, broker, etc.

Total Sales and Expenses.—Enter in Item 12 total sales and in Item 13 total amount of expenses in carrying on business, net any deduction or allowance from the sale price of services or goods.

Inventory.—With Item 12 or 13 on Item 9, Item 10 immediately below the amount of sales, indicate how much was valued at cost, or cost or market.

Investments.—At the end of the last fiscal period must be valued on the same basis as at the end of the preceding fiscal period, unless permission to make a change has been granted by the Commissioner of Internal Revenue. If you do not know how to value your investments, see Section 214. If at the Act has been altered, the new amount may correspondingly be reported. (See Articles 160 and 161-165, Regulation 41.)

Depreciation.—Do not include cost of business equipment or furniture, expenditures for replacement or for permanent improvement in property, or items not fully expensed.

Salaries.—Enter in Item 12 all salaries and wages not reported in "Factor" under "Gross Income." Enter in Item 13 for your own services or the services of your dependents minor children if deferred until reported as income in Schedule B.

Rent.—Enter in Item 12 rent on business property in which you have no equity.

Do not include real estate being your principal place of business.

Do not include amounts from leases, royalties, advances, advances, etc., should include amounts from your capital investment in or otherwise to the business.

B. INCOME FROM SALARIES, COMMISSIONS,

If salary, wages, or other compensation received by yourself or dependent minor children from sources was at the rate of \$1,000 or more per month, report on separate lines together with the compensation or position and employee's name and address. The total amount of income from salaries, wages, commissions, etc., should be reported in Item 12.

C. INCOME FROM PARTNERSHIPS, PERSONAL

Report your share of whatever received or paid in the profits of the partnership or personal service corporation or in the residue of the estate or trust. Do not include the part of each estate that one-half of which is given to the personal service corporation or to the United States, or the part of each trust that one-half of the assets and distributions under Rule 1, below, or interests in corporation funds, etc., among the tax-exempt portion of the estate, and distributions under Rule 2, below, or interests in the trust with respect to interests upon tax-free amounts made available by partnerships and personal service corporations as required prior to February 28, 1919.

Report your share of whatever received from partnership or personal service corporation.

Amount of partnership income between years—if you derived income from a partnership or personal service corporation, when last year different from the calendar year.

D. PROFIT FROM THE SALE OF LAND, BUILDINGS, STOCKS, BONDS.

If the price of house or sales made through any one broker aggregated \$1,000 or more, report the transaction on a separate line with the name and address of the broker.

Stocks.—Enter in Item 12 "stocks" or "stocks and bonds."

Bonds.—Enter the actual consideration or price, or, in case of an exchange, the fair market value of the property received.

Cost.—Enter the amount out of pocket, if it was acquired before March 1, 1917.

E. INCOME FROM RENTS AND ROYALTIES.

Rent of property.—Describe briefly, as in D.

Rent.—If you received property or rights in lieu of cash rent, report the income as though the cash had been paid in cash. Gross received as rent on a crop share should be reported as income for the year in which deposited your return.

Interest on Corporation Bonds.—Enter in Item 12 interest received on bonds of corporations organized or doing business in the United States, containing a clause by which the debt corporation agrees to pay the interest without any deduction for taxes, provided the exemption is not claimed under any clause in the charter of the bondholders. If the interest was retained, the yield is reported.

Interest on Bonds.—Report here interest paid, and all taxes on bonds not used in business or profession, and including those assumed at local level of a bank holding to increase the value of the property. Do not include Federal income taxes, nor state or federal taxes.

Land.—Report here amounts of property not connected with your trade, business, or profession, received during the year from fees, rents, shippings, or other causes, or lease rents, which were not compensated for by insurance or otherwise. Do not include amounts from rents or other interest paid for profit. Losses should be reported in Schedule A.

Contributions.—Report here only contributions made within the year to organizations incorporated exclusively for religious, charitable, scientific, or educational purposes.

Enter on Item K(a) all cash or stock dividends received during the year except (a) dividends paid by personal service corporations not of earnings accumulated after December 31, 1917.

K(b). INTEREST ON OBLIGATIONS OF THE UNITED STATES.

Interest on First Liberty Loan, 3½ percent bonds and Victory Liberty Loan 3½ percent bonds, and on War Finance Corporation bonds, and on other obligations of the United States, commonly known as surtaxes. Interest upon all other issues of Liberty Loan bonds, as well as interest upon certificates of indebtedness and War Savings Certificates, except from surplus income the equivalent of the amount of the principal and interest paid thereon, is exempt from Federal income tax.

K(c). OTHER INCOME FROM PARTNERSHIPS, PERSONAL SERVICE CORPORATIONS, AND FIDUCIARIES.

To determine the losses, any deductions, exemptions, or credits of a kind and wholly and properly chargeable against the income taxable of the rates for a particular year shall first be applied against the income subject to rates for the most recent

Do not include taxes assessed against local boards of liquidating to increase the value of the property owned, as for parking, assessors, etc., nor personal service taxes.

Report.—Enter in Item 12 interest received on bonds of corporations, etc., held under a trust agreement to keep property in the hands of business, including a reasonable allowance for disbursements, and on other business property by the firm, state, corporation, or other organization, by which the property is held, and the good guy losses claimed as deductions. Explain these deductions in table 21, page 2 of return.

Losses.—Enter in Item 12 any losses sustained under (a) with respect to property not used in business, such as your dwelling under (b) or personal property, should be reported in Schedule I.

The amount claimed for gross and total depreciation, including obsolescence, should be the same as the amount claimed for the year ended March 1, 1917, if received before that date divided by the estimated life in years. If obsolescence is claimed, state in full at least of property why useful life is less than actual life. When the annual rate of depreciation and when the estimated useful life of the property, or its value March 1, 1917, are known, claim obsolescence.

Do not claim any deduction for depreciation in the value of a building occupied by you as a dwelling, or of other property held for personal use. Do not claim any deduction for depreciation of real estate (exclusive of improvements thereto), but do not deduct any depreciation of personal service property.

Deductions of patents, copyrights, etc., and depletion of mines, etc.—If you claim a deduction on account of depreciation in the value of patents, copyrights, and other legal privileges, or on account of depletion of mines or oil and gas wells, enter in Item 12.

Amortization of war facilities.—If amortization of war facilities is claimed, the reporter is required to account with this return the information and schedules called for in Schedule G, page 2.

Bad debts.—Enter in Item 12 any debts arising from sales or professional services which you have never collected, or are worthless, and have a chance of doing so year.

A bad debt affecting income received since March 1, 1917, will not be allowed as a deduction unless the same was reflected in the income reported for the year in which it was incurred. If the bad debt is not reflected in the income reported for the year in which it was incurred, enter the amount of the bad debt as a deduction on Schedule G, page 2.

State under "Explanation of deductions," at the foot of the page, how the debts were accounted to be worthless. Insolvency of the debtor, inability to collect by legal process, or any other reason, should be given as a reason for not paying by a mechanics' agency, a debt previously charged off as bad must be returned as income for the year in which collected.

Bad debts resulting out of personal loans should be reported in Schedule I.

Capital gains.—Enter in Item 12 the net result of gains sold plus other business deductions if in excess of the total amount of sales and income from business or personal service, report the difference as a loss by using red ink on a minus sign.

BONUSES, DIRECTOR'S FEES AND PENSIONS.

Do not report here pay, not exceeding \$1,000, for active service in the military or naval forces of the United States received during the taxable year prior to the termination of the present war as fixed by proclamation of the President.

SERVICE, CORPORATIONS, AND FIDUCIARIES.

Enter in Item 12 as many credits of your share of such income (except dividends and Liberty Bond interest received through the partnership or personal service corporation) as you have received from the corporation or personal service corporation for the year ended March 1, 1917, or the remainder of your share of such income, except stock dividends and city bond interest, which should be apportioned as provided in instructions under K(a) and K(b) below.

Dividends.—Enter in Item 12 the amount to be distributed to the beneficiaries periodically, whether or not regular intervals, each beneficiary must include in his return his distributive share of the net income, even though not yet paid him. In the taxable year on the date of withdrawal of the corporation or personal service corporation from the state or territory or state, he should include in his return his distributive share for such accounting period ending within his taxable year, which income will be taxable at the rate for the year in which the income was received.

E OTHER PROPERTY, AND FROM LIQUIDATING DIVIDENDS.

Enter in Item 12 the fair market value on that date. Attach statement explaining the value of the property, and the amount of the deduction to be taken, and the amount to be included in the cost not changed in income tax returns as deductions from income. Enter in column 7 the amount of time and tear, obsolescence, or depletion deducted since March 1, 1917, or since date of acquisition, if subsequent to March 1, 1917.

Enter in Item 12 the amount of the deduction to be taken in the amount of column 8 and report the difference as a loss by using red ink on a minus sign.

F. INCOME FROM RENTS AND ROYALTIES.

Report.—Wear, tear, and other obsolescence, depreciation, and property losses.—See instructions for Schedule A, above. Explain in table 2 of page 2 of the return.

Other expenses.—Report expenses related to home property or personal service property, such as taxes, insurance, repairs, etc. Do not include taxes assessed, based on local needs of a kind tending to increase the value of the property assessed.

Interest on bonds.—Enter in Item 12 the amount to be distributed to the beneficiaries periodically, whether or not regular intervals, each beneficiary must include in his return his distributive share of the net income, even though not yet paid him. In the taxable year on the date of withdrawal of the corporation or personal service corporation from the state or territory or state, he should include in his return his distributive share for such accounting period ending within his taxable year, which income will be taxable at the rate for the year in which the income was received.

On WHICH TAX OF 2½ WAS PAID BY MY DEBTOR CORPORATION.

Yellow certificate, Form 1611, the interest received must be reported in G. The amount of tax paid by the debtor corporation is treated as a credit against the tax due. (See Part 1, page 1 of the return), but such amount paid at the source should be reported in column G, line 4.

INTEREST ON OBLIGATIONS OF THE UNITED STATES.

Report here schedule interest on bank deposits, notes, mortgages, etc., and other taxable income for which no place is provided elsewhere on this return.

I. GENERAL DEDUCTIONS.

General purpose, for the generation of molybdenum, to children or animals, and contributions to local charities, and for the care of the aged, disabled, or infirm.

Do not deduct for local or general rehabilitation.

The total amount of contributions to be entered in must not exceed 15 percent of the net in one computed without the benefit of this deduction. If item 4, Schedule I, exceeds 15 percent of the sum of Item 11, part 1, plus Item 12, enter the amount up to 15 percent of such sum and the excess must be deducted accordingly.

Enter under "Explanation of deductions," at the foot of page 2 of the return, the name and address of each corporation to which you made contributions claimed as deductible, and the amount of each contribution.

Bad debts and other debts.—Bad debts arising out of loans should be reported here, and other proper deductions not claimed elsewhere. Attach detailed statement of all such deductions. Deductions claimed by tracing amounts to cover costs and having should be fully explained in an attached statement setting forth conditions of the debts.

Amounts paid to beneficiaries.—If this return is filed as an estate in the process of administration, the amounts paid to beneficiaries should be deducted from the amount of tax due.

Bad debts and other debts—Bad debts arising out of loans should be reported here, and other proper deductions not claimed elsewhere. Attach detailed statement of all such deductions. Deductions claimed by tracing amounts to cover costs and having should be fully explained in an attached statement setting forth conditions of the debts.

K (a). DIVIDENDS.

Amount to December 31, 1917; and (b) stock dividends received during the taxable year which are included in Item 12, columns 4, and 5, page 1.

INTEREST ON OBLIGATIONS OF THE UNITED STATES ISSUED SINCE SEPTEMBER 1, 1917.

In the event that you receive interest on the issues of the United States issued since September 1, 1917, you must deduct the amount of tax due.

Interest on the amounts specified in Item 13, page 1, under Form 1275 less College and corporate taxable interest. Interest on War Finance Corporation bonds is exempt from all normal income tax and is exempt from surtax only with respect to a principal not exceeding \$1,000. This exemption is in addition to the exemption provided by law.

K (b). **INTEREST ON OBLIGATIONS OF THE UNITED STATES.**

Interest on First Liberty Loan, 3½ percent bonds and Victory Liberty Loan 3½ percent bonds, and on War Finance Corporation bonds, and on other obligations of the United States, commonly known as surtaxes. Interest upon all other issues of Liberty Loan bonds, as well as interest upon certificates of indebtedness and War Savings Certificates, except from surplus income the equivalent of the amount of the principal and interest paid thereon, is exempt from Federal income tax.

K (c). **OTHER INCOME FROM PARTNERSHIPS, PERSONAL SERVICE CORPORATIONS, AND FIDUCIARIES.**

Interest paid by personal service corporations not of earnings accumulated after December 31, 1917.

L. PARTS OF INCOME SUBJECT TO DIFFERENT TAXES.

To determine the losses, any deductions, exemptions, or credits of a kind and wholly and properly chargeable against the income taxable of the rates for a particular year shall be applied against the income subject to rates for the most recent

II. General traverse

No demurrer, plea, answer, counterclaim, setoff, claim of damages, demand, or defense in the premises having been entered on the part of the defendant, a general traverse is entered as provided by Rule 34.

III. Argument and submission

On January 8, 1925, this case was argued and submitted on merits by Mr. A. L. Humes, for the plaintiffs, and by Mr. Thomas F. Lewis, jr., for the defendant.

IV. History of proceedings

On suggestion of the death of Charles E. Herrmann, one of the plaintiffs, made in open court by Mr. A. L. Humes, leave was granted to proceed in the names of the surviving plaintiffs.

On January 26, 1925, the court filed findings of fact and conclusion of law, and entered judgment in favor of the plaintiffs in the sum of \$905,225.73, with interest. The court also filed a memorandum.

On February 28, 1925, the defendant filed a motion for a new trial.

On March 13, 1925, the plaintiffs filed a motion to amend the judgment.

On March 23, 1925, the court filed an order vacating, setting aside and withdrawing the judgment entered January 26, 1925, filed a new conclusion of law, and entered a new judgment.

This new conclusion of law will be found on page 80 of this record.

75 VI. Findings of fact, conclusion of law (as amended March 23, 1925), and memorandum by the court

January 26, 1925

[Title omitted.]

This case having been heard by the Court of Claims on a stipulation of facts signed by Humes, Buck & Smith, attorneys for plaintiff, and by Robert H. Lovett, Assistant Attorney General, for the defendant, the court, in accordance with said stipulation, makes the following

Findings of fact

I

The plaintiffs, John J. Mitchell and Augustine L. Humes, are the surviving executors of the last will and testament of Dellora R. Gates, deceased, the third executor, Charles E. Herrmann, having died since the filing of the petition herein.

II

The said John J. Mitchell and Augustine L. Humes are citizens of the United States, the said John J. Mitchell being a resident of the city of Chicago, county of Cook, and State of Illinois, the said Augustine L. Humes being a resident of the borough of Spring Lake, county of Monmouth, and State of New Jersey, and each of them having at all times borne true allegiance to the Government of the United States and not in any way aided, abetted, or given encouragement to rebellion against the said Government, or at any time aided or abetted in any manner or given comfort to any sovereign or government that is or ever has been at war with the United States.

III

Dellora R. Gates was a citizen of the United States, and resided at Port Arthur, Jefferson County, and State of Texas, and died at the Hotel Plaza, in the city, county, and State of New York on the 28th day of November, 1918. The said Dellora R. Gates had at all times prior to her death borne true allegiance to the Government of the United States, and had not in any way aided, abetted, or given encouragement to rebellion against the said Government, or at any time aided or abetted in any manner or given comfort to any sovereign or government that is or ever has been at war with the United States.

IV

The said Dellora R. Gates died leaving a last will and testament with codicil thereto, which will and codicil were duly probated in the county court of Jefferson County, State of Texas, on January 6, 1919, and letters testamentary thereon were issued to said executors by said county court on the 6th day of January, 1919, and the said executors thereupon duly qualified as such, and said appointment of said executors still remains in full force and effect. A certified copy of said last will and testament and codicil thereto and of said letters testamentary are annexed to the petition as Exhibit "A," and are by reference made a part of this finding. Plaintiffs have been continuously executors of the said estate from the time of the issuance of said letters testamentary down to the time of the filing of the petition herein.

V

The said Dellora R. Gates in and by said will and codicil made certain money bequests to legatees, and made certain specific bequests and devises to certain legatees and devisees, bequeathing and devising to them certain personal and real property, which property was not income-producing, and produced no income during the year 1919.

All the rest and residue of the property, both real, personal and mixed of every kind and character of which said Dellora R. Gates deceased, was seized and possessed, was bequeathed and devised by general legacy and devise by said Dellora R. Gates to trustees in trust, the net income to be paid over as provided in article "fifty-first" of the said last will and testament. Dellora F. Angell (now Dellora A. Norris) and Edward J. Baker, the persons named in said article "fifty-first," were both living at the death of said Dellora R. Gates, and are both living at the present time.

VI

The said executors, in their capacity as executors of the estate of said Dellora R. Gates, during the year 1919 and prior to the 31st day of December, 1919, collected all the income and earnings on and from the property and assets of the said estate of Dellora R. Gates, all of said income and earnings collected being collected from stock bonds, choses in action, and personal property, except that \$272.00 of said income so collected was collected from real property, and none of said income or earnings was collected from property specifically bequeathed or devised by said will or codicil of said Dellora R. Gates, deceased. Of said income and earnings so collected by the said executors the sum of \$75,033.97 was applied by them for the support, education, and maintenance of Dellora F. Angell, in accordance with the provisions of Subdivision "I" of article "fifty-first" of the said last will and testament, and all the remainder of said income and earnings so collected by said executors was used and applied by them in their capacity as such executors in and towards the payment of the United States of the "estate tax" (imposed by the act of September 8, 1916, and amendments thereto by the acts of March 3, 1917, and October 3, 1917) and other valid claims or charges against said estate.

The gross amount of income received by the executors from the said estate for the year 1919 was less than the amount of the said "estate tax" paid by them to the United States.

In conformity with the practice and rules and regulations of the Treasury Department under sections 223-225 of the revenue act of 1918, the said executors, during the year 1920 and within the time prescribed by law, and on March 14, 1920, made and filed with the collector of internal revenue of Albany, New York, a return of all the income received during the year 1919 by said executors in their capacity as executors of the estate of said Dellora R. Gates, deceased. In said income tax return said executors did not claim a deduction under the provisions of section 214 of the revenue act of 1918 for the whole or any part of the sum of \$2,927,762.64, which was the amount of "estate tax" payable by and chargeable against said estate as shown by the return for "estate tax" filed by said executors on or about the 26th day of November, 1919, with the collector of internal revenue for the district in which Port Arthur

xas, is situated, and of which amount of "estate tax" \$1,000,000
is paid by said executors to said collector on the 25th day of Fe-
bruary, 1920, and the balance of which amount of "estate tax" was
paid by said executors to said collector on the 27th day of May, 1920.
Said executors did not claim a deduction for said amount of "estate
tax" for the reason that the regulations and rulings of the Commis-
sioner of Internal Revenue and the Secretary of the Treasury, and,
among others, article 134 of Regulations 45, forbade and refused to
allow any deduction of any part of the "estate tax" upon the said
estate.

At the time when in the year 1920 the executors made and filed
aforesaid their said return of income received and collected by
them as such executors during the year 1919, the regulations and
rulings of the Commissioner of Internal Revenue and the Secretary
of the Treasury forbade and refused to allow any deduction from
said income so received and collected during the year 1919 of any
part of the "estate tax" upon said estate, and neither the decision of
the Court of Claims nor the decision of the Supreme Court of the
United States in the case of United States v. Woodward, 256 U. S.
32, had been rendered. The income tax computed upon the amount
of income received by said executors as set forth in their said re-
turn, without making any deduction for "estate tax," amounted to
the sum of \$905,225.73. A copy of said income tax return is, together
with the instructions printed on the return, annexed to the petition
as Exhibit "B" and made a part of this finding by reference. The
said executors on or about March 15, 1920, made payment, under
protest, of the first quarterly installment of the said sum of \$905,-
225.73 in order to avoid the imposition of penalties and in-
terest by the Commissioner of Internal Revenue and the col-
lector of internal revenue at Albany, New York, and to avoid
constraint or other summary proceedings or other proceedings for the
enforcement and collection of taxes consequent upon the failure or
refusal to pay the tax as computed in accordance with the said
regulations and rulings. Thereafter pursuant to said regulations
and rulings and in accordance with the practice of the Treasury
Department in such cases the collector of internal revenue at Albany,
New York, made three several demands on the said executors for the
payment of the second, third, and fourth quarterly installments of
said tax respectively. In order to avoid the imposition of penalties
and interest by the Commissioner of Internal Revenue and the col-
lector of internal revenue at Albany, New York, and to avoid dis-
straint or other summary proceedings or other proceedings for the
enforcement and collection of the taxes consequent upon failure or
refusal to pay the tax in accordance with said regulations, rulings,
and demands said executors made the payments, under protest, of
the second, third, and fourth quarterly installments of the said tax
for the year 1919 amounting in the aggregate to a total \$678,919.30
which, together with the first quarterly installment amounted in

the aggregate to a total sum of \$905,225.73; that the said second, third, and fourth quarterly installments were paid to the collector of internal revenue at Albany, New York, in equal quarterly payments on or about the fifteenth days of June, September, and December, respectively, in the year 1920.

VII

On January 6, 1922, said executors duly filed an application with the collector of internal revenue at Albany, New York, praying for the refund of all of said income tax for the year 1919 so paid, on the ground that the "estate tax" was deductible in computing said income tax. Said application for refund was in all respects complete, regular, and in due form, but was denied and rejected by the Commissioner of Internal Revenue and the Secretary of the Treasury, who still deny and refuse to pay said executors the money asked for and demanded in said application.

VIII

The said sum of \$905,225.73 so paid by said executors as and for tax as aforesaid was received and is still retained by the United States.

IX

The said executors in their capacity as such are the sole owners of the claim sued upon herein and no assignment or transfer of said claim or any part thereof or any interest therein has been made.

X

No action upon this claim other than as herein set forth has been taken before Congress or other of the departments of the Government or in any court other than the petition filed in this court.

On or about the 14th day of February, 1923, the Commissioner of Internal Revenue, acting of his own motion and not in respect of a claim filed by the said executors, notified the said executors that the "estate tax" paid as aforesaid had been allowed as a deduction in computing the income tax payable with respect to the income of said estate received during the year 1920, and offered to remit the taxes with respect to said income received during the year 1920 so far as said taxes had not been paid, and to refund such part of said taxes as had been paid, but the said executors refused and still refuse to accept such application of said "estate tax," or remission or refund of said taxes in respect of income received during the year 1920, any part thereof, and then demanded and still do demand that sa-

estate tax" be allowed as a deduction in computing the tax payable in respect of income received during the year 1919.

In the income tax return filed in 1920, of income received during the year 1919, as set forth in Finding VI hereof, said executors did not claim any deduction under the provisions of section 214 of the revenue act of 1918 for any inheritance tax, for the reason that the regulations and rulings of the Commissioner of Internal Revenue and the Secretary of the Treasury, and, among others, article 134 of Regulations 45, forbade and refused to allow any deduction of any part of the inheritance taxes upon the said estate.

XII

During the year 1919 there became due and payable by the executors of the estate of Dellora R. Gates the inheritance tax imposed by the State of Texas, amounting to the sum of \$357,739.34, which sum the executors paid to the State of Texas on the 27th day of May, 1919. By the terms of the will of the said Dellora R. Gates the executors were required to pay said inheritance tax from the residuary estate, which was bequeathed and devised in trust as aforesaid. By the laws of the State of Texas the said executors were required to pay said inheritance tax and were subject to statutory penalties for noncompliance with the said requirement and to liability for said tax. In the income-tax return aforesaid the executors did not claim a deduction for the said sum of \$357,739.34 for the reason that the regulations and rulings of the Commissioner of Internal Revenue and the Secretary of the Treasury forbade and refused to allow any deduction for any part of said inheritance tax. Said inheritance tax was paid to the State of Texas on the respective legacies and devises set forth in the will and the amount thereof was paid out of and deducted from the residuary estate.

XIII

At the time when in the year 1920 the executors made and filed their said return of income received and collected by them as such executors during the year 1919, the regulations and rulings of the Commissioner of Internal Revenue and the Secretary of the Treasury forbade and refused to allow any deduction from said income so received and collected during the year 1919 for any part of any inheritance tax paid upon or in respect of said estate or any part thereof.

XIV

On January 6, 1922, said executors duly filed an application with the collector of internal revenue at Albany, New York, praying for the refund of said income tax for the year 1919 paid as set forth in Finding VI, on the ground that said inheritance tax paid

to the State of Texas was deductible in computing said income tax. Said application for refund was in all respects complete, regular, and in due form, but was denied and rejected by the Commissioner of Internal Revenue and the Secretary of the Treasury who still deny and refuse to pay said executors the money asked for and demanded in said application.

XV

The said sum of \$905,225.73, so paid by said executors as and for a tax as aforesaid was received and is still retained by the United States.

XVI

The said executors in their capacity as such are the sole owners of the claim sued upon herein, and no assignment or transfer of said claim or any part thereof or any interest therein has been made.

XVII

If said inheritance tax paid as aforesaid to the State of Texas had been allowed as a deduction in computing the income tax payable with respect to the income received during the year 1919 as aforesaid, said income tax would have been reduced by the sum of \$261,149.50.

Conclusion of law

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiffs are entitled to recover \$905,225.73 against which the United States has an offset in the sum of \$889,931.57 for income tax payable in the year 1921 in respect of the year 1920. It is therefore adjudged and ordered that the plaintiffs recover of and from the United States the sum of nine hundred and five thousand two hundred and twenty-five dollars and seventy-three cents (\$905,225.73) with interest thereon at 6 per cent from the respective dates of payment in 1920, to wit, on one-fourth thereof from March 15, 1920; on one-fourth thereof from June 15, 1920; on one-fourth thereof from September 15, 1920; and on the remaining one-fourth thereof from December 15, 1920, less the sum of \$889,931.57 with interest thereon at 6 per cent from the following date to wit, interest on one-fourth thereof from March 15, 1921; interest on one-fourth thereof from June 15, 1921; interest on one-fourth thereof from September 15, 1921; and interest on the remaining one-fourth thereof from December 15, 1921.

Memorandum

This case, in the opinion of the court, is controlled by the decision of the Supreme Court in the case of *United States v. Woodward*, 256 U. S. 632. The judgment awarded is predicated upon said case.

VII. Judgment

At a Court of Claims held in the city of Washington on the 23rd day of March, A. D. 1925, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the plaintiffs and do order and adjudge that the plaintiffs, as aforesaid, are entitled to recover and shall have and recover of and from the United States the sum of nine hundred and five thousand two hundred and twenty-five dollars and seventy-three cents (\$905.225.73), with interest thereon at six per cent from the respective dates of payment in 1920, to wit, on one-fourth thereof from March 15, 1920; on one-fourth thereof from June 15, 1920; on one-fourth thereof from September 15, 1920; and on the remaining one-fourth thereof from December 15, 1920, less the sum of \$81,931.57, with interest thereon at six per cent from the following dates, to wit, interest on one-fourth thereof from March 15, 1921; interest on one-fourth thereof from June 15, 1921; interest on one-fourth thereof from September 15, 1921; and interest on the remaining one-fourth thereof from December 15, 1921.

BY THE COURT.

VIII. Petition for appeal

Filed April 21, 1925

From the judgment rendered in the above-entitled cause on the 23rd day of March, 1925, in favor claimants, the defendants, by their Attorney General, on the 21st day of April, 1925, make application for and give notice of an appeal to the Supreme Court of the United States.

HERMAN J. GALLOWAY,
Assistant Attorney General.

IX. Order allowing appeal

It is ordered by the court this 4th day of May, 1925, that the defendant's application for appeal be, and the same is, allowed.

82 In Court of Claims of the United States

[Title omitted.]

Clerk's certificate

I, F. C. Kleinschmidt, assistant clerk, Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of a history

64326-25-4

of the proceedings; of the findings of fact, conclusion of law (as amended), and memorandum by the court; of the judgment of the court; of the defendant's application for appeal; of the order of the court allowing said application.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington City this 9th day of May, A. D. 1925.

[SEAL.]

F. C. KLEINSCHMIDT,
Assistant Clerk, Court of Claims.

[Indorsement on cover:] File No. 31184. Court of Claims. Term No. 470. The United States, appellant, vs. John J. Mitchell et al., as executors of the last will and testament of Dellora R. Gates, deceased. Filed May 14th, 1925. File No. 31184.



